8-15-1990

Joint Hearing on Propositions 129, 133, 134, 136

Senate Committee on Revenue and Taxation

Senate Committee on Local Government

Assembly Committee on Revenue and Taxation

Assembly Committee on Local Government

CALIFORNIA LEGISLATURE

SENATE COMMITTEE ON REVENUE AND TAXATION
SENATE COMMITTEE ON LOCAL GOVERNMENT
ASSEMBLY COMMITTEE ON REVENUE AND TAXATION
ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Joint Hearing on

PROPOSITIONS 129, 133, 134 & 136

August 15, 1990

197-J

California Legislature

Senate Committee

on

Revenue and Taxation

SENATOR WADIE DEDDEH, CHAIRMAN

JOINT HEARING ON PROPOSITIONS 129, 133, 134 & 136

WITH THE

SENATE LOCAL GOVERNMENT COMMITTEE

SENATOR MARIAN BERGESON, CHAIRMAN

AND

ASSEMBLY REVENUE AND TAXATION COMMITTEE

ASSEMBLYMAN JOHAN KLEHS, CHAIRMAN

AND

ASSEMBLY LOCAL GOVERNMENT COMMITTEE

ASSEMBLYMAN SAM FARR, CHAIRMAN

ROOM 2040, STATE CAPITOL BUILDING

SACRAMENTO, CALIFORNIA

AUGUST 15, 1990

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ASSEMBLY LOCAL GOVERNMENT COMMITTEE
ASSEMBLYMAN SAM FARR, CHAIRMAN

SACRAMENTO, CALIFORNIA, AUGUST 15, 1990

Agenda

General presentations:

Legislative Analyst

Department of Finance

Proposition 129 **(Comprehensive Crime Reduction and Drug Control Act of 1990)**

Proponents: Attorney General John Van de Kamp or representative

Other proponents

Opponents:

Department: Franchise Tax Board

Proposition 133 **(California Safe Street Act of 1990)**

Proponents: Roy Behr, Lt. Gov. Leo McCarthy's office

Other proponents

Opponents:

Department: Board of Equalization

Proposition 134 (Alcohol Tax Act of 1990)

Proponents: Assemblyman Connelly, or representative

Other proponents

Opponents: Joe Deviney, Taxpayers for Common Sense

Other opponents

Department: Board of Equalization

Proposition 136 (Taxpayers Right-to-Vote Act of 1990)

Proponents: David R. Doerr, Cal-Tax

Fred Main, Calif. Chamber of Commerce

Other proponents

Opponents: County Supervisors Assn. of California

League of California Cities

California Tax Reform Association

Other opponents

Department:

CHAIRMAN DEDDEH: The real purpose of this hearin is supposedly -- and we're expecting -- and I hope they will show up, members of the Local Government Committee of the Senate and the Revenue and Taxation and the Local Government Committees of the Assembly to join with us to look at four proposals or initiatives that are on the ballot. We are required, I discovered, by law to hold these hearings, whether we agree or disagree is immaterial, but we are suppose to hold these hearings.

Mr. Marston, you're on Rev. and Tax? Come on up here. For those of my colleagues who haven't met Assemblyman Marston, I'm very proud to introduce him not only as a colleague, but he's also from San Diego, and we're very proud of him and we wish him well in the election.

All right. Let's take Proposition 129. And the format is to hear the Legislative Analyst and the Department of Finance and then we will try to restrict the hearing as much as possible to anybody who wishes to make a few comments. So let's take Proposition 129, the Comprehensive Crime Reduction and Drug Control Act of 1990. This is an initiative proposition by the Attorney General John Van de Kamp and so Finance -- or Legislative Analyst. Let's hear Legislative Analyst first.

CRAIG CORNETT: Yes, Mr. Chairman, members, Craig Cornett from the Legislative Analyst's Office. I'll give you a brief overview of Proposition 129 which is related to crime, taxation and bonds and is cited as the Comprehensive Crime Reduction and Drug Control Act of 1990.

CHAIRMAN DEDDEH: Excuse me. Do you have a prepared statement to give us?

CORNETT: We do have a handout we are going to -- when we get to that point.

CHAIRMAN DEDDEH: All right.

CORNETT: There are basically four major pieces to this measure. First is to provide new funding for anti-drug programs. Secondly, some provisions that were intended to increase personal income and bank and corporation taxes. Those provisions, as I'll mention later on, were already enacted by the Legislature in AB 274, last month as part of the budget compromise.

The third piece is $740 million in general obligation bonds for new correctional facilities, and finally the last part is some changes to provisions of Proposition 115 which was the measure just enacted by the voters in June relating to court procedures and criminal law.

CHAIRMAN DEDDEH: So this raises about or will require about a billion, $200 million every three to four years.

CORNETT: Yes. Let me pass out that --

CHAIRMAN DEDDEH: One portion of that's already committed by the -- this was the conformity.

CORNETT: That's correct.

CHAIRMAN DEDDEH: What was that? $615 -- $600

million?

CORNETT: The first portion -- the 90-91 allocation or transfer to the crime fund is $102 million.

CHAIRMAN DEDDEH: Yeah, but the conformity act, was --

CORNETT: Under AB 274, where the estimate that's used for 90-91 in the Administration's calculations was $561 million.

CHAIRMAN DEDDEH: $561 million.

CORNETT: As you can see from the chart, and I believe this is also reproduced on page five of your consultant's handout as well. This measure -- the first provision of the measure requires the transfer from the General Fund to a new Anti-Drug Superfund over an eight year period of specified amounts which show in the second column -- second column from the left. The amount shown in the first four years, starting with $102 million in the current year and going up to -- or going down to $183 in 93-94. Those amounts are actually specified in the measure. Those would be the transfers. That would be a cost to the General Fund.

Initially, I believe, when the proponents put this measure together, they had intended that the provisions, the tax provisions would generate this additional revenue which would in fact, then be transferred to this Anti-Drug Superfund. However, as I said as a result of the work of the Legislature last month, this will now result in a General Fund cost of those amounts those four years.

In the second four-year period, from 94-95 to 97-98, as you can see there, we have estimates from the Franchise Tax Board of $100 million per year. What this is is the measure requires the FTB to estimate how much money would be generated by the provisions of the measure, the tax provisions of the measure, and then would transfer that amount to this Anti-Drug Superfund. Right now it's unclear as to whether or not any transfer will be made in that period because of the -- again the actions of the Legislature in AB 274. For illustrative purposes, though, we have shown here the estimate that we used in our analysis which was from FTB. Consequently --

CHAIRMAN DEDDEH: What happens now that we've conformed to Federal Law and this passes? Where do we get the money, from General Fund?

CORNETT: It comes from the General Fund the first four years. Now from 90-91 through 93-94 would come from the General Fund; $102 million in the current year, $459 next year, $407 the next year after that.

CHAIRMAN DEDDEH: Okay.

CORNETT: And then as I say, in the last four years it's unclear --

CHAIRMAN DEDDEH: Senator Greene has a question.

SENATOR BILL GREENE: Does that mean that the federal funding that's now allocated to cities and counties -- that that will cease?

CORNETT: No. There will be no change in federal -- the federal -- are you talking about the federal drug funds that are --

SENATOR GREENE: The Bennett thing?

CORNETT: No. This will not affect that in any way.

SENATOR GREENE: Okay.

CORNETT: So as I say, in the last four year period, it's unclear whether there will be any transfers. So I think I want to differentiate between 93-94, the first four numbers in this table and then the first four years in the table and the last four years.

This table also shows how those funds that would be transferred to the Anti-Drug Superfund would be allocated and as you can see about ten percent of the money would go to the Department of Justice's Crackdown on Cocaine Task Force Program. About, I believe it's 54 percent would go to local law enforcement; county sheriffs and city police departments. And about 36 percent would be distributed to county boards of supervisors for drug treatment prevention, probation services and prosecution of drug offenders.

This would obviously add a great deal of additional money to -- in the area of local drug programs; and when you get to the next measure, Proposition 133, you could see if both of these measures passed, it would be a significant increase in the amount of state commitment for anti-drug programs.

CHAIRMAN DEDDEH: 133 -- is that the --

CORNETT: That's the sales tax measure.

CHAIRMAN DEDDEH: -- the Lt. Governor's.

CORNETT: Lt. Governor McCarthy's.

CHAIRMAN DEDDEH: Are you lumping both of them together -- you want to discuss them both?

CORNETT: No, I'll discuss that one in just a moment.

SENATOR GREENE: At this point. I was looking for that section -- I don't find it.

CHAIRMAN DEDDEH: Senator Greene.

SENATOR GREENE: -- of the drug treatment programs -- where would I find that. I've been leafing through here trying to find it.

CORNETT: In the initiative?

SENATOR GREENE: Right, in the initiative.

CORNETT: Okay. I'll have to take a look for that. That would show up in the handout I gave you. That would be under the board of supervisor's column.

SENATOR GREENE: Okay, you don't know what page I'll find it on in here?

CORNETT: Yeah, I can tell you. It would be on

page --

CHAIRMAN DEDDEH: Tell us --

SENATOR GREENE: Just tell us --

CORNETT: Page five, I believe of the measure.

SENATOR GREENE: Yeah, I have the right one. It seems only like a law enforcement only.

CORNETT: It is primarily geared toward law enforcement, that is correct.

SENATOR GREENE: So it really doesn't do anything for the community drug treatment programs.

CORNETT: As I say, 36 percent would go for drug treatment and prevention. All the amounts that show in the column for board of supervisors.

SENATOR GREENE: But that's also shared with law enforcement.

CORNETT: That's shared with the probation and also shared with the District Attorney's Offices.

SENATOR GREENE: That's what I said, with law enforcement.

CORNETT: Yes, that's right.

SENATOR GREENE: So what percentage of that goes strictly to the community?

CORNETT: There's no specified amount in the measure for that. That would be --

SENATOR GREENE: That is controlled by the supervisors?

CORNETT: That's correct.

SENATOR GREENE: Which means that the communities get nothing. Okay, thank you -- or very little.

CORNETT: There's also a provision in the measure, you should know, that specifies that none of the additional funds should replace existing funds that are -- the state currently provides. That could have an -- obviously a budget implication in the future. As you are aware, though, the State has not been decreasing, but has in fact been increasing its commitment to anti-drug programs in recent years.

The other provisions of the measure --

CHAIRMAN DEDDEH: Let me follow what Senator Greene said. In the handout here --

CORNETT: Um-hmm.

CHAIRMAN DEDDEH: -- you're disbursing all the money and specifying who gets what. Treatment -- there's no mention of treatment here.

CORNETT: Well it's -- the treatment --

CHAIRMAN DEDDEH: Board of supervisors?

CORNETT: Under board of supervisors, that's right.

CHAIRMAN DEDDEH: They will use that. They're getting $671 million over a period of ten years or eight years.

CORNETT: Eight years. If in fact they get the transfers from -- in the those last four years are actually made from the General Fund, then they would receive $671 million, that's correct.

CHAIRMAN DEDDEH: So the grand total, as I see it here, for the Superfund is what, $1.5 billion?

CORNETT: The measure right now -- we believe it would transfer $1.5, $1.6 billion from the General Fund to the Superfund. It provides for allocations of about $1.9 billion in the figure over here.

CHAIRMAN DEDDEH: Yeah, I see that.

CORNETT: Now, as I say though, not knowing what's going to happen in that second four-year period, there is a provision that if moneys are not -- the measure does not generate any additional funds, that all of these programs would be cut back across the board proportionately.

CHAIRMAN DEDDEH: How much of the total money goes to the treatment, education, specifically?

CORNETT: It's not specified. Thirty-six percent of it goes for drug treatment and prevention. And that is, I say, discretionary to the board of supervisors --

CHAIRMAN DEDDEH: It should be the other way around. Should be 67 percent go to treatment and education and the other part for law enforcement. So this is really a law enforcement initiative.

CORNETT: The other provisions of the measure which don't relate to that particular -- to the anti-drug funding or to the taxes, include $740 million in general obligation bonds for additional prison beds. That's about 18,000 new beds the measure contemplates building. Eight thousand by the Department of Corrections and ten thousand additional to house prisoners who would otherwise be housed in county jails.

We see that particular fiscal aspect of being a total cost of about $1.3 billion in principal and interest or about an average annual payment of $55 million. I bring that to your attention, given that the Legislature we know is also considering a prison bond bill this week for about $450 million. If both those pass --

CHAIRMAN DEDDEH: Gentlemen, we are looking at Proposition 129. The Attorney General's proposition. Do you have a handout for all the members here? All set? Okay. Go ahead sir.

CORNETT: So I just brought that to your attention. If both the contemplated $450 million bond act which may be placed on the November ballot is approved, and the $740 million that is in this one; there would be a little over a billion dollars in bond moneys available for new prison construction beginning November.

The final part of the measure is related to

Proposition 115, which was the measure that passed on the June ballot related to the criminal law and court procedures. This measure basically replicates everything that was in Proposition 115, but makes one change. Proposition 115 had a provision that said that criminal rights in California shall not be construed by the courts to be any broader than those rights guaranteed under the U.S. Constitution. This measure has a clarifying statement that indicates that criminal rights that affect the right of privacy shall not be construed to affect the right of privacy as it affects reproductive choice is separate from that discussion. This is the proponent's, as I say, attempt to clarify that question legally I believe.

I think I don't really have any other comments to make. As I said the big uncertainty, I think we see in 129 is the question of what happens after the first four years. The first four years, we think the measure will clearly result in a general fund cost of $1.2 billion. The last four years, it's just not clear right now what will happen, whether any additional money will be transferred.

CHAIRMAN DEDDEH: Any question of the analyst? Finance? Senator Greene.

SENATOR GREENE: Was that intended? That this would shift to the General Fund?

CORNETT: I believe at the time that the proponents put this together, and you may want to ask the proponents about this, the -- obviously the tax changes had not been enacted. So I believe this was contemplated as being a self-financing measure. That

was the intent.

SENATOR GREENE: So what it really means for those of us who sit on the Budget Committee, and we should also view this in terms of how it's going to affect our future budgets. And we know from this year, it's going to take us two years to pull out of the hole that we're in right now. So about the third year, assuming that we succeed reasonably well -- about the third year we will begin to have the pressure from this coming on us while will hit us in the fourth year. Is that reasonable?

CORNETT: Well it'll actually hit the first year, I think, Senator.

SENATOR GREENE: Well I mean it's going to affect us immediately, but I'm talking about when we get the big whammy.

PETER SCHAAFSMA: Well, I think you've got a fairly sizable whammy in the second year.

SENATOR GREENE: Oh, okay, so I'm -- you're conservative then. But, my thinking is going in the right direction. All right. Thank you.

CHAIRMAN DEDDEH: Department of Finance.

SCHAAFSMA: The way we understood the process -- we were going to go through with the presentation on all four measures.

CHAIRMAN DEDDEH: Oh, all of you are Leg. Analyst? Fine, okay.

SCHAAFSMA: Craig will now go through the next measure which is Proposition 133.

CHAIRMAN DEDDEH: You're going to take that one, too, All right. This is the half-a-cent sales tax.

CORNETT: That's correct, cited as the Safe Streets Act of 1990 by the proponents. This measure has three elements. The first element as you just mentioned, Senator Deddeh, is the increase in state sales tax by a half cent beginning July 1st, 1991 and lasting through July 1st, 1995. Second element is the measure allocates those additional funds for anti-drug programs and the third provision relates to some prison sentencing laws that will result in some increases in the state prison population.

Based on the Board of Equalization estimates, we have estimated that the measure will generate $7.5 billion to a new safe streets fund, which is created by the measure during that four-year period that the measure is in law. I have a handout now which will show you how that money will be distributed. If I can find it here. Here we go.

CHAIRMAN DEDDEH: While you're distributing that let me ask you a question. Considering the state budgeting problem now and next year and probably the year after next, do you think it's a good public policy to earmark money for anti-drug programs. You're our advisors --

SCHAAFSMA: Right. I think our position would be that earmarking restricts your flexibility in coping with future budgetary pressures, and so on that basis we

would not recommend that you proceed on an earmarking basis.

CHAIRMAN DEDDEH: And yet the half-a-cent sales tax is earmarked as I understand it, isn't it?

MICHAEL GENEST: That's correct, yes.

SENATOR GREENE: Mr. Chair.

CHAIRMAN DEDDEH: Senator Greene.

SENATOR GREENE: On that point, for those individuals who were cautious and worried about Prop. 98, we're doing the -- not to say that the area isn't important, or we shouldn't do it -- of course education is important, we should have done that, too. But we're really boxing ourselves in. We're losing more flexibility in terms of dealing with the budget. We're reducing the range -- the pool of revenue that would be available to us and what have you, and no one would quarrel about the importance of moving on the drug problem. However, from my point of view, while I don't have any problem, I know we need the law enforcement.

It would really be more encouraging to have something that was a little bit more community oriented because, and I understand where the Attorney General is coming from. He is a law enforcement person. That is, not a community person which was part of the knock on him for Governor. But, it would be better even if we're going to do this, I would even question it then, that we do something which is a little bit more balanced in terms of treatment, community, education and what have you. I don't care what law enforcement people say.

Until they move in that area somewhat, they're not up to -- all they're going to do is catch the criminals. They're not going to block anybody from venturing into that area. They're not going to do anything with the people except who are in the business -- they're not going to do anything on the users unless they get caught. And 90 percent of them never get caught.

CHAIRMAN DEDDEH: Is there any provision in either one of those two propositions that would make it possible for the Legislature, say by a two-third majority vote, to modify, enhance, improve -- you see?

CORNETT: Yes, in the measure, Prop. 129, I believe it's just a majority vote that's required.

CHAIRMAN DEDDEH: Is that right?

CORNETT: Yes.

CHAIRMAN DEDDEH: Can we transfer money from one to another?

CORNETT: Yes. I believe that's correct. Let me make absolutely sure here. Yes. I think that's correct. You could change that. There's certain things you can't change. You can't change the bond provisions, the prison bond act provisions.

CHAIRMAN DEDDEH: I understand, I understand.

CORNETT: But I believe you can change -- to be honest with you Senator, I'll have to take a moment to take a look back at that to absolutely confirm that.

CHAIRMAN DEDDEH: Because that would be very helpful and informative. I'm sure we will research that.

CORNETT: Yes, you can do that. I see it now. It is here.

CHAIRMAN DEDDEH: It's therefore not as restrictive as the nickel-a-drink proposition where it requires four-fifth of the Legislature to modify. Is that not correct?

CORNETT: The one I was talking about just now. That was the Attorney General's -- that's the sales tax -- or the income tax measure.

Proposition 133, as I just began, which increases the sales taxes, I said that would generate seven and a half billion to the Safe Streets Fund. The handout we just provided shows how that money would be distributed. This measure distributes the money on a percentage basis. Forty-two percent of the money would be used for anti-drug education and of that forty-two percent, it is broken down even further. And as you can see in the left-hand column here; that is broken down by anti-drug education and counseling, out-of-classroom and alternative programs, child development and preschool programs, programs for at-risk students and incentive grants. Over the entire period that the additional sales tax is generated, that would result in about $3.1 billion for anti-drug education.

The second largest amount would be for law enforcement programs. Those include -- that would be 40 percent of the sales tax revenues. That would include

local law enforcement agencies which would get the lion's share of that, district attorney offices and courts. That's about $3 billion over the entire period the measure is in force.

Ten percent of the amounts would go to prisons and jails. That includes jail construction and operations at the local level, the operating cost of state prisons and then some drug treatment for people in youth and adult correctional facilities at the state level. That's about $746 million over that entire five-year period.

And finally an additional eight percent is set aside for drug treatment, specifically, and that's about $600 million over that entire period.

CHAIRMAN DEDDEH: The grand total is what, $7.4 billion?

CORNETT: $7.4, $7.5 billion, that's right over the entire -- that's based on the current estimates of the Board of Equalization. As I say, this measure is a little different.

CHAIRMAN DEDDEH: How much of that total will go to drug treatment?

CORNETT: Eight percent would be specifically earmarked for drug treatment, and then a smaller amount would be earmarked for drug treatment for prison and youthful offenders also. I believe all together we're estimating that that amount totally would, if the $7.5 billion in revenues does materialize, that would be about $700 million all together.

CHAIRMAN DEDDEH: But you also spend a lot of money on classroom, child development and so on. So a good chunk probably is spent there.

CORNETT: Forty-two percent is for education purposes.

CHAIRMAN DEDDEH: About $3.1 billion.

CORNETT: That's correct.

CHAIRMAN DEDDEH: Over a period of four years, five years.

CORNETT: Five years, yes, that's correct.

CHAIRMAN DEDDEH: Senator Greene.

SENATOR GREENE: Just for clarification. This initiative is very well balanced, I personally think, but I guess drug treatment is the only thing that is directed at adults. Everything else is at youth. Schools and what have you.

CORNETT: Well, not exactly.

SENATOR GREENE: Grants, I guess that could be interpreted as being across the board. Is that correct.

CORNETT: I believe so and then I think also down in the column here on prisons and jails. Drug treatment for offenders.

SENATOR GREENE: Oh, no, no, I'm not talking about

people in jail.

CORNETT: Oh, okay. You're talking about --

SENATOR GREENE: I don't represent people in jail.

[Laughter]

SENATOR GREENE: And I have nothing against them, except that they're in jail and they're no longer a part of my constituency, so -- I'm talking about people who are out every day working and living like anybody else, but they're addicted.

CORNETT: That would show down here in this eight percent for drug --

SENATOR GREENE: Okay, that's what I said. That's the only thing that we have for it though.

CORNETT: Yes.

SENATOR GREENE: Okay. Thank you.

CHAIRMAN DEDDEH: All right.

CORNETT: The other provision of this measure, in addition to the tax increases and the allocation of the funds, would be to close some of the credit provisions that are currently available to prison inmates. Currently, as you are aware, I believe inmates receive credits for working or participating in education programs which reduce the amount of time they spend in prison. This measure would prohibit certain -- persons convicted of violent or drug related crimes from

receiving those credits. Thus it would increase the length of stay of some people in prison -- some persons in prison -- and then increase the prison population accordingly. Based on estimates from the Department of Corrections, we're estimating that when the full impact of those provisions is realized, which will not be until the turn of the century, around the year 2012, there would be about 1400 new inmates in prison at a cost of -- in today's dollars -- of $30 million for that particular provision in the measure.

Just some last comments. I would point out a few things to you about the measure. One is that the money that would go for jails could be used for both operations and construction. Just to let you know about that, given that I know you're also going to be considering this next week some additional bond measures for jail construction. If, as I said earlier, both this measure and Proposition 129 are enacted, there would be a significant increase in the anti-drug money available to both local governments and the state. I think those are the comments that I have. If you have any questions.

CHAIRMAN DEDDEH: Mr. Elder.

ASSEMBLYMAN DAVE ELDER: His estimate of $7.5 billion. I'm having some difficulty understanding the time period here. Is it four years?

CORNETT: It's four years, the measure would be enacted, but my understanding is that you see in 95-96, there's a carry over because of the timing in which some of these sales tax revenues are accounted for.

ASSEMBLYMAN ELDER: So you collect the end of the calendar period in the first quarter of the new calendar year unless you have to hold that money for that period of time and you're estimating the half-cent sales tax represents how much annually?

CORNETT: Well annually it varies between the years, but if you can see here, it's around -- it's between -- around $1.5 billion in the first year to $1.8 and then $1.9 and then to about $2 billion. I think that's in the bottom.

ASSEMBLYMAN ELDER: This chart here? What line are you on?

CORNETT: The bottom, where it says totals. That would analogous to the Board of Equalization's estimate of the total revenue impact on an annual basis.

ASSEMBLYMAN ELDER: Okay, so they're estimating a quarter of a cent -- $750 million.

CORNETT: Half cent. $750 billion -- $7.5 billion over the five-year period. They're estimating $1.5 billion the first year, 1.781 the second year, 1.925 the third year.

ASSEMBLYMAN ELDER: Well, the quarter cent sales tax we have in effect now is suppose to generate --

CHAIRMAN DEDDEH: 900, a little less than that.

ASSEMBLYMAN ELDER: But it's 11, 13 months? Is that it?

UNIDENTIFIED: A little less than $800 million.

ASSEMBLYMAN ELDER: A little less than $800 million and here we have something on the order of $750 million the first year for the quarter cent. I'm just trying to check your math in terms of, are these realistic. Thank you.

SENATOR GREENE: Mr. Chairman.

ASSEMBLYMAN SAM FARR: Mr. Chairman.

CHAIRMAN DEDDEH: Senator Greene. Oh excuse me, Mr. Farr.

ASSEMBLYMAN FARR: I'll defer to the Senator.

SENATOR GREENE: I just have one final question. I've been looking for it. This bill wouldn't have helped a person like myself -- that's treatment. This is not for alcohol, is it? Under drugs, does this -- alcohol --

CORNETT: I think both would fall under that category. I will have to take a -- It would be in --

SENATOR GREENE: I've been looking for it. Because not only have I become more informed on that subject, that a drug addiction starts from alcoholism. And in fact I think the statistics would show about 52, 53 percent --

CORNETT: Sir, I don't believe it specifies one way or another. All of the funds would be allocated. The

treatment funds would be allocated through the Department of Alcohol and Drug Programs.

SENATOR GREENE: Okay. So would they then have the authority too?

CORNETT: That's what appears.

SENATOR GREENE: Okay.

CHAIRMAN DEDDEH: Mr. Farr had a question.

ASSEMBLYMAN FARR: I had a question, maybe staff could answer it. When I was carrying the half-cent sales tax authorization for local communities, we put a max cap of seven cents or seven percent in there because we didn't want every -- we didn't want it to get so out of sync that you would have parts of the state that may have a ten or eleven percent sales tax and others with six or seven percent. Maybe Martin can help me. Is there anything in this initiative as I read it really quickly, I can't find it, whereby the nature of it -- does it just override that cap because it's a state imposed?

PETER SCHAAFSMA: That would be correct. The seven percent that you're talking about I believe referred to -- has a limitation on the ability of locals to add half-cent sales tax increments.

ASSEMBLYMAN FARR: They could do it in increments up to seven, but then --

SCHAAFSMA: Right.

ASSEMBLYMAN FARR: That was the limit.

SCHAAFSMA: Now this would not be bound by that limitation.

ASSEMBLYMAN FARR: Would it affect it if the cities hadn't reached their seven percent limit?

SCHAAFSMA: I believe that would be the case. The cities would still be bound by that seven percent limit and if we were at seven percent as a result of this measure or greater, then they would be limited.

ASSEMBLYMAN FARR: So the passage of this would restrict the local government's ability to seek further increases.

SCHAAFSMA: During the period that this tax increase was in effect.

CHAIRMAN DEDDEH: And that half a cent, Mr. Elder, generated at the local level, if I understand it under Prop. 13, you have to have a special -- a new entity that would be created, but would raise that kind of money. Is that not correct?

ASSEMBLYMAN FARR: You create an authority.

CHAIRMAN DEDDEH: You create an authority.

ASSEMBLYMAN FARR: The authority then submits the measure to the voters.

CHAIRMAN DEDDEH: Otherwise it would require two-thirds majority vote, even at the local level. Go

ahead, you're going to now take a nickel-a-drink, 134.

MICHAEL GENEST: Yes.

CHAIRMAN DEDDEH: 134, all right.

MICHAEL GENEST: Mike Genest with the Legislative Analyst Office. Proposition 134, which is cited as the Alcohol Tax Act of 1990, sometimes known as the Nickel-A-Drink Tax, has really three major provisions. The first is that it imposes a surtax on tax, beer, wine and liquor. We estimate that the revenue from that tax would be $360 million in 90-91 and $760 million a year after that. This would represent for example an increase of about 30 cents on a six-pack of beer, about 25 cents on a bottle of wine and $1.27 on a bottle of liquor.

The measure also provides for how this money would be spent.

CHAIRMAN DEDDEH: Excuse me, let me interrupt you now that we have a quorum.

GENEST: As I said the measure is going to raise about $760 million a year ongoing. And it specifies how the money would be spent. It would have to be spent for a variety of programs in five categories. Alcohol and drug abuse prevention and treatment programs would receive 24 percent of the money; emergency, medical and trauma care treatment programs would receive 25 percent, mental health, 15 percent. A variety of health and social services programs would receive 15 percent and law enforcement related programs would receive 21 percent.

The Legislature and the Governor would have to specify the specific programs in many cases. For example, I mentioned that there were a variety of health and social services programs. There are any number of programs in that area that could receive some of this money, and it would be up to the Legislature and the Governor to decide exactly which programs would get the money.

CHAIRMAN DEDDEH: Correct me if I'm mistaken. For instance you take the prevention, treatment and recovery -- That says that you spend of the 24 percent, you spend 4 percent for prevention, alcohol and other drug problems. This is a broad category. Then we will put the meat on the things. Is that what you're saying?

GENEST: Um-hmm. For example you'd probably give that money to the Department of Alcohol and Drug --

CHAIRMAN DEDDEH: I see. Thirteen percent for treatment and recovery services for alcohol and other drug problems. The Legislature and the Governor would have to specify how that 13 percent is spent by these people?

GENEST: Um-hmm.

CHAIRMAN DEDDEH: Okay.

CORNETT: Another provision of the measure is the guaranteed funding level that it provides for a variety of existing state programs. Essentially the programs that are subject to this guaranteed provision are those that we just discussed and of course there's not a lot of specificity about what some of those are. So there

may be some question of interpretation as to exactly which.

CHAIRMAN DEDDEH: One more question. I already hear on the radio -- I haven't seen it on TV. They admonish the faithful to read this because it's going to cost you more than $760 million. It's going to cost you a lot more. How true that is; and if it's true, where does that extra money come from and why? If this specifies $760 million.

GENEST: It would have to come out of the General Fund or some other state fund.

CHAIRMAN DEDDEH: Is the ad accurate?

GENEST: There are a lot of things stated in the ad. I don't think I can say that it is accurate or inaccurate. I wouldn't characterize it, and we in our analysis, don't characterize the effect in exactly those terms. We do, however, mention for example that the guarantee applies to a variety of programs for which the state spent more than $2 billion dollars in 1989-90. Now we don't know how much more because some of them, as I said, would require some interpretation by someone, the Legislature or --

CHAIRMAN DEDDEH: So then we not only guarantee that, but on top of that have to spend this money?

GENEST: Well, for example you already in 89-90, spent at least $2 billion for the program subject to the guarantee. Presumably you would, on an ongoing basis, also spend some money for those programs, but you wouldn't -- it wouldn't be a specific required level.

With the measure, you would be required, not only to spend the $2 billion, but to increase the budget for the programs to account for caseload --

CHAIRMAN DEDDEH: So there is a floor below which you cannot go.

GENEST: And the floor is continually raised as a result of caseload increases and --

CHAIRMAN DEDDEH: Unlike what happened to the lottery. We passed the lottery and then we cut education by the amount that the lottery would have provided for education.

GENEST: This measure is very clear in not allowing --

CHAIRMAN DEDDEH: We absolutely did that --

GENEST: -- not allowing that sort of, it's called supplantation.

SENATOR RUBEN AYALA: Question, Mr. Chairman.

CHAIRMAN DEDDEH: Question, Senator Ayala.

SENATOR AYALA: Yes, we have a proposition -- initiative that has qualified for the ballot. You know, there always is confusion when it happens -- have conflicting propositions up there for people to vote on. What happened if they both are passed by the voters? What would be the interaction between the two -- the proposition and the initiative? They deal with the same subject matter.

GENEST: I'll let Mr. Schaafsma answer that.

SCHAAFSMA: That's a difficult question and we aren't quite sure of the answer. If the Legislative measure passes and receives the higher number of votes, it's not clear whether you might get both of them put in effect or whether the courts fashion some arrangement out of them. If the Legislative measure received fewer votes, it would in effect -- but was still approved -- would in effect, disqualify itself by its own terms. So, that's about as far as I can take you. It's a question of what --

CHAIRMAN DEDDEH: We have a lawyer in the house.

ASSEMBLYMAN FARR: I'm not the lawyer, but the Legislative Constitutional Amendment that we approved prevails whether it gets less number of votes because its constitutional provision supersedes statutory, which is what the initiative is.

SCHAAFSMA: 134 also has constitutional provisions.

SENATOR AYALA: They both have constitutional provisions, too?

SCHAAFSMA: Both of them contain constitutional provisions.

GENEST: The constitutional provision in 134 is just exempting the revenue from this measure from 134 from essentially the Gann and Prop. 98 requirements.

SENATOR AYALA: But at this point in time we don't

know how that -- if it should qualify or be passed by the voters, we're going to have some interesting stories aren't we.

CHAIRMAN DEDDEH: Senator Greene.

SENATOR GREENE: There's another point, Mr. Chair, in regards to how much support for of all of these efforts. But what's disturbing that everyone -- and that seems to be the popular thinking now -- locks us in to a given position -- given revenue level, which means that once again we're just diminishing the pool of other revenue that we have for all the other needs of the state.

Now on our side, I'd have my hands on the spot because I have the budget. But then also, it was in that same budget lets my hands in other social areas. And therefore, other people who have other primary concerns, and what have you, they -- the pool is not as deep and it's narrowed and, I mean, I'm for all of this. I certainly represent a community where we need it all. But at the same time when you think seriously and think about the overall needs, and you think about everything about that the budget has to take care of; I think we've had a glaring example of the kind of posture we're going to be in in future years and that is dangerous. That's even dangerous from the point of view that I'd be coming from as well as the point of view of nearly any other member of the Legislature. I think we all need to be conscious of that and very frankly we all need to be saying that to our constituency because all these issues are good issues, but whether we buy after we buy these good issues and I just raise it because frankly I'm concerned about it.

GENEST: Senator Greene, on that point let me -- the next point I was going to raise about the measure, is the 1990-91 affects of this guarantee provision. In fact, we now estimate that the requirement would require the Legislature and the Governor to reopen the 90-91 budget and add back $180 million which presumably would have to come from the General Fund. The particular programs that would be affected are, in fact, all within your subcommittee as you indicated, and they total $180 million. So that impact would occur immediately in our view.

In 91-92, we think that the additional -- or the cost of that guarantee provision would go up to $300 million, and that's the difference between those two years, is primarily because some of the provisions of Proposition 99 are phasing out in that year. You would then, under this provision, have to replace the cigarette tax money with general revenue. So, and then in the ongoing years, we don't have a specific estimate. We think that it's reasonable to look at tens of millions of dollars of additional cost each year because of caseload and cost increases that are protected by the measure. So there is a substantial impact immediately and then it gets bigger as you go out.

ASSEMBLYMAN ROBERT FRAZEE: That particular point is true.

SENATOR AYALA (Acting Chair): Mr. Frazee.

ASSEMBLYMAN FRAZEE: When would the revenues start to flow under this provision if it were passed by the voters?

GENEST: We're estimating in the first year, $360 million. That's in --

ASSEMBLYMAN FRAZEE: But is there an effective date of when that collection would start?

GENEST: The tax takes effect January 1. The provision, the measure itself takes effect immediately.

ASSEMBLYMAN FRAZEE: -- immediately, but the tax January 1. So would any of that requirement be offset by revenue during that six months?

GENEST: No, it's very clear.

ASSEMBLYMAN FRAZEE: That's another issue.

GENEST: You cannot use the revenue from the initiative to pay for this guarantee part of the initiative. You cannot use it for that.

ASSEMBLYMAN FRAZEE: Is there also a no substitution clause for, you can't use this revenue to substitute for already ongoing programs?

GENEST: Yes. In other words, there's two things at work here. First, you are bound in perpetuity to fund these programs. As they grow, the population and cost increases without respect to the revenue. Then the revenue must be used to add on to those programs on top of those levels.

ASSEMBLYMAN FRAZEE: Then there is some degree of truth in the ad that says that this is going to cost a

lot more than what will be raised by the tax itself.

GENEST: Well--

ASSEMBLYMAN FRAZEE: Is that a fair statement?

GENEST: I think there is some degree of truth in that. I mean --

ASSEMBLYMAN FRAZEE: Yes it will.

GENEST: Obviously, you're going to have to fund those costs somewhere. You can either raise another tax, or you can --

ASSEMBLYMAN FRAZEE: Or eliminate some other program.

GENEST: Yes.

ASSEMBLYMAN FRAZEE: We have a lot of room to do that these days.

SENATOR AYALA (Acting Chair): Okay, Senator Calderon and then Mr. Marston.

SENATOR CHARLES CALDERON: I want to raise some issues as it relates to the minority communities and specifically the Hispanic community. I want to start with the tobacco initiative and our experience there, insofar that it has or has not been responsive to the Hispanic community and in terms of their needs. Then I want to talk about how or whether we're going to see the same kind of performance with respect to this alcohol initiative.

Insofar as the tobacco initiative is concerned, there was basically a number of provisions relating to health education, mental health, earmarking of money, and amongst that earmarking there were target groups. One of the largest target groups was Hispanics and Blacks. Yet when you take a look at the media education which has occurred so far, it has been highly insensitive and has missed the mark in terms of communicating to, in particular, Hispanic community about the dangers of smoking. Moreover, I'm informed that the State Department of Health will have programs in effect. They just finished contracting with 150 agencies throughout the state for treatment programs and education programs and they will go into effect October 1st.

Well, the advertising occurred in April. So you've got a five-month lag between the advertising and the follow-up programs that are occurring. Moreover there's been no effort to have any kind of grass roots education in Hispanic community, and I'm talking about targeting, not only in terms of education but also in terms of grass roots, that educates them and sets up an infrastructure so that they understand in the community that smoking is dangerous. Nothing on the level of perhaps what they've done in Minnesota, where they had an infrastructure built in.

Moreover, there's been no attempt, and I suppose there's a little bit better situation in terms of use of tobacco because that's a problem that occurs once immigrants come into this country. But in terms of alcohol, the problem comes in. And there's no -- I don't see anything in the initiative that's going to

guarantee that we determine the extent of the alcohol problem in the Hispanic community or the Black community or the Asian community. That is going to be a population group that will be 50 percent of the population of California. It certainly is one of the largest groups affected and targeted by the tobacco and the alcohol industry.

So you have a situation where the jury is still out on tobacco. You have a program that's in place that's only a two-year program. We don't even know what the program's going to look like when the Legislature now comes back to review as they can review and provide for implementing legislation and now we're going to go on to the alcohol tax. And I guess my point is that there's so many good intentions; the Heart Association and the Lung Association and all the constituent groups that coalesce and move these initiatives forward. All these good intentions and absolutely no idea of how to make those work. And now we're going to have another one presented on the ballot. Can you give me some satisfaction that the experience with respect at least to the minority community that we've had relative to tobacco is not going to occur with respect to the alcohol tax?

CAROL BINGHAM: Senator Calderon, Carol Bingham from the Analyst'S Office. I'm in charge of the health programs. I think you probably should be directing those questions to the proponents of the initiative when they get up here.

I'd just like to comment that there are significant funds available in the alcohol -- excuse me, in Proposition 99 appropriations to fund an evaluation, and I would expect that the very issues that you're raising

would emerge as part of that evaluation, if indeed, the ads have been ineffective in reaching Hispanic voters, for example, or Hispanic people. That those kinds of things would be apparent.

SENATOR CALDERON: Well to proponents in the room, I've framed the issue and I guess I'll direct it towards them. I suppose then you would agree with everything that I've had to say, right?

BINGHAM: We really don't have any basis to agree or disagree at this point, but there is some money for evaluation, and we will be looking at that when the data becomes available.

SENATOR CALDERON: All right. I'll wait for the right people to come up.

CHAIRMAN DEDDEH: Mr. Marston.

ASSEMBLYMAN MARSTON: Thank you Mr. Chairman. I have a question. What is the mechanism by which this guarantee grows? You talked about caseload. Is it three percent a year, six percent? Is there a tie percentage or how does -- how do we arrive at that?

GENEST: It's not specified and I can refer you to the provision in question. I think one lawyer's opinion is as good as another's on this. The provision is on the final page of the measure. I believe you have the measure. Section 32.240, and in particular that last sentence, is the one that raises this issue. It states, "existing state funding and per capita levels of service" etcetera. Our interpretation of that together with the lawyers that we consulted, is that in order for

a program to be funded at the same per capita level of service, year to year, you have to provide some kind of an increase to cover cost increases. Obviously you would have to provide increases if there were more people being served as well. It could be a very difficult technical issue to figure out exactly what kind of a cost-of-living increase was required here and we don't really know what kind, but clearly something would have to be provided.

ASSEMBLYMAN MARSTON: Do you know of any intent by the proponents? Maybe I should ask them when they --

GENEST: We haven't discussed that issue with them.

ASSEMBLYMAN MARSTON: One other question, Mr. Chairman. Is there -- you were a little vague on the answer to a variationist [sic] question. Is there a projection as to when spending on this program might exceed revenues and necessitate it to dipping into the General Fund? Three years down the road? Six years? Five years?

GENEST: Immediately.

ASSEMBLYMAN MARSTON: Immediately?

GENEST: The first year you would have to find -- this year you would have to add $180 million to the programs affected by the measure.

ASSEMBLYMAN ELDER: Because the budget was cut?

GENEST: There are a variety of reasons. In some cases the Legislature reduced the budget, in some cases

these are Governor's vetoes. In one case it's an effect of Proposition 99 phasing out in the current year.

ASSEMBLYMAN MARSTON: Thank you.

ASSEMBLYMAN ELDER: Mr. Chairman.

CHAIRMAN DEDDEH: Yes, Mr. Elder.

ASSEMBLYMAN ELDER: Yes, I've heard these ads. I think they're understated. I mean -- you know if you have $2 billion that's locked in there with a COLA and the COLA kicks off immediately upon passage, I mean that's an infinite rate in terms of the first year. I mean because you are -- I mean there's really no way to predict that. If you're a -- you go from $2 billion up $180 million on that first month, you're talking a nine percent increase right there.

GENEST: But that's not really because of a COLA or anything, in fact, --

ASSEMBLYMAN ELDER: Regardless of what the reason is, I mean, but you're saying that the COLA's hard to figure out because not only is it constituted by caseload -- it's caseload driven, which will be what it is and no one really knows what that will amount to. Plus the CPI which is not specified, right? I mean so you'd have the $180 million. You have the CPI. You have to be determined and then you have case driven increases. So, you have a compounding effect of all this can be rather more dramatic than what they're saying in the ads.

GENEST: I guess the --

ASSEMBLYMAN ELDER: I mean it would depend on, you know, which I guess this will be subject to litigation in any event. Which I guess is not recoverable under the cost of the nickel-a-drink either is it? I mean --

SENATOR GREENE: Mr. Chairman, to comment on Assemblyman Elder's point. Dave, I assure you I didn't raise that point initially by happenstance. That was on purpose to try and get folks to wonder about that comment.

ASSEMBLYMAN ELDER: Well, I assume, like everybody, the ads were false. You know, it just sort of surprises me that something that I hear on a political ad might be right.

[Laughter]

ASSEMBLYMAN ELDER: And, if anything it's understated.

SENATOR GREENE: Well, there's something I catch immediately because I sit there and deal with the total social budget and what have you and when I stop and think about it, I lay odds it is going to limit me in that area least of all the entire state budget, and I think it's something we -- I mean all these are good areas. This is not to say that the people aren't. But it's how we do it, and I think that's what we're going to have to make a practice of examining much more so not only in how we examine other things but even be a little bit more tidy how we need to do some of these things.

ASSEMBLYMAN FRAZEE: It's true.

CHAIRMAN DEDDEH: All right. 136, Taxpayers Right to Vote, general description.

PETER SCHAAFSMA: Yes, Mr. Chairman, I'm Pete Schaafsma. Prop. 136 deals generally with state and local voting requirements for the approval of tax measures. It also contains some language stating how certain conflicts between it and other measures on the same ballot are to be resolved.

With regard to the tax provisions, it places a definition of general taxes and special taxes into the constitution for purposes of its voter approval requirements. These definitions would apply to both state and local taxes. As a tax levy for the General Fund to be used for general governmental purposes. However, it does include taxes on motor vehicle fuel specifically as a general tax.

Special taxes would be taxes levied for special purposes or deposited in a fund other than the General Fund.

CHAIRMAN DEDDEH: So this will be then applicable to the nickel-a-drink proposition if your interpretation is correct.

SCHAAFSMA: Depending upon how the conflict language is resolved.

CHAIRMAN DEDDEH: Okay.

SCHAAFSMA: The second thing it does is that with respect to new special taxes on personal property, it requires that special taxes on personal property be

imposed on a value basis as opposed to a per unit tax such as so many cents per gallon of liquor or so many cents per cigarette. It also limits the rate of such taxes to one percent. The third provision of it is that all new or increased state taxes require a two-thirds vote. This would appear to require that new taxes that are offset by tax reductions that now require only a majority vote take a two-thirds vote.

A fourth provision is that special taxes enacted by initiative must receive a two-thirds vote. General taxes would still require only a majority vote. The fifth provision is that local general tax increases require a majority approval of the voters including the tax increases of charter cities. This is complicated by the status of Prop. 62 right now. Prop. 62 was found to not apply to charter cities so it's clear that this measure would affect charter cities' taxing authority. The question of Prop. 62's applicability to other local agencies is still pending in court so we can't really tell you what affect this would have at this point.

Finally the measure allows certain of its requirements to be suspended to raise money for disaster relief. The state can suspend its requirements for the approval of tax measures and special personal property tax restrictions by a two-thirds vote and a signature of the Governor. Locals could suspend their -- entirely their voter approval requirements with a two-thirds vote of governing bodies.

With regard to the conflicting law provisions. The measure has language which states how conflicts between itself and other measures on the ballot are to be resolved. The method of resolution is generally

different than how such conflicts would be resolved under existing constitutional provisions. First, the measure states that it would invalidate all provisions of a conflicting constitutional measure if it receives fewer votes. Under the existing scheme, only the conflicting provisions of another measure would be invalid.

Second, the measure states that a conflicting statutory measure would be completely invalid regardless of the number of votes it receives. Right now, again, you'd have to look at the conflicts.

Third, it states that it does conflict with any measure that enacts any tax, affects any computation of a tax or imposes a rate not authorized by the measure. Our problem here is that we can't really tell you what the legal effect of these provisions are. There's some uncertainty as to their applicability through other measures on the November ballot.

On the basis of what the measures do, we would identify three measures that do contain some conflicts, and they are the other three measures that are the subject to this hearing: 134, 133 and 129. We don't identify Prop. 126 as one that conflicts on the basis of what it does because it's a general tax imposed on a per unit basis, and the Prop. 136 restriction applies only if it's a special tax imposed on a per unit basis. And finally, we don't identify any budget impacts to the state budget as it results to the measure.

CHAIRMAN DEDDEH: Let me run that one more time by me. 126 is the nickel-a-drink, no.

SCHAAFSMA: 126 is the Legislative liquor tax measure.

CHAIRMAN DEDDEH: All right, that's a constitutional amendment.

SCHAAFSMA: That's correct.

CHAIRMAN DEDDEH: That's a constitutional amendment, but the other one could?

SCHAAFSMA: That's right.

CHAIRMAN DEDDEH: That's what I asked, whether it applies to the nickel-a-drink, and you said we don't know the conflicts.

SCHAAFSMA: The question there really revolves around what are the particular conflicts that are involved. And you could make an argument that there isn't a direct conflict between the two tax increases.

CHAIRMAN DEDDEH: Well is it?

SCHAAFSMA: You could make an argument that the spending provisions are not in conflict.

CHAIRMAN DEDDEH: That's right. Is it not also true, because the constitutional amendment goes into the General Funds, so it could be construed as a general tax even though it's identified a special commodity to be taxed.

SCHAAFSMA: Because it goes into the General Fund and it's used for general purposes --

CHAIRMAN DEDDEH: It's not earmarked.

SCHAAFSMA: -- we would identify it as a general tax increase.

CHAIRMAN DEDDEH: Sure, sure, exactly. Mr. Frazee.

ASSEMBLYMAN FRAZEE: Are there any retroactive provisions in this that would affect measures already adopted? Let me give you a specific case that raises some concern. In San Diego County there have been two sales tax propositions passed by a majority vote. One in particular, the justice facilities is now in the courts over the question of whether or not that was legal, whether or not it needed a two-thirds vote. Would it have any effect on that if this was to pass?

SCHAAFSMA: I don't believe so. The measure states that it would be effective with regard to other measures passed on or after November 6, 1990. The earliest you could give any effect would be November 6.

ASSEMBLYMAN FRAZEE: Would it have any tendency to taint the ultimate decision of the --

SCHAAFSMA: The phrase, "...imposed upon them alone"?

ASSEMBLYMAN FARR: Yes, special taxes imposed upon them alone.

SCHAAFSMA: I guess I would read that to be referring to the targeted segments of taxpayers so that the tax would apply to those targeted segments and to no

other segments of taxpayers.

ASSEMBLYMAN FARR: How does this provide that kind of protection?

SCHAAFSMA: By imposing limitations on the ability to enact special tax increases, I would surmise.

ASSEMBLYMAN FARR: The general taxes for special purpose districts under the proposition, do you believe that a new city or a new countywide special district levy could be imposed for general taxes?

SCHAAFSMA: That's the way I believe the trend in interpreting those provisions has gone. That you can have a general tax for the general purposes of a limited purpose agency but it's open to litigation at this point still.

ASSEMBLYMAN FARR: Could a non-countywide district levy those same taxes? You'd have a special district, non-countywide --

SCHAAFSMA: There are provisions now that allow a special district non-countywide to impose a special tax.

ASSEMBLYMAN FARR: But wouldn't this provision before of targeted taxpayers be protected from special taxes imposed upon them alone prohibit a non-countywide district from levying a general tax?

SCHAAFSMA: We would tend to look at the section that this is contained in as being merely intent language and not having an effect of its own.

ASSEMBLYMAN FARR: What about the definition of special versus general taxes? What is the difference between saying general taxes are taxes imposed for general government purposes and general taxes are taxes levied to be utilized for general government purposes?

SCHAAFSMA: I don't see any change really in how we look at that relative to today. That is --

ASSEMBLYMAN FARR: Well, isn't a levy when you collect a tax? We levy a property tax upon collection of it. We levy a sales tax upon the collection of it. Would this require budgets to essentially be local budgets then to be affected by a change in wording from impose to levied?

SCHAAFSMA: I think in the common usage those two terms are fairly interchangeable. Levy is a word that means much the same as imposed.

ASSEMBLYMAN FARR: Well since the current law and statute "imposed," don't you think these clever drafters knew exactly what they were doing when they moved it to constitutional language and not using the same words, but in fact changed it to "levy."

SCHAAFSMA: I think that may be better addressed to the proponents.

ASSEMBLYMAN FARR: Well, it's something to think about.

CHAIRMAN DEDDEH: Mr. Farr, may I respectfully ask your indulgence for thirty seconds?

ASSEMBLYMAN FARR: On the last question -- I think you, Mr. Chairman -- I think deals with a sort of fundamental issue that was raised in the Geiger case in which the Supreme Court questioned the ability to use the initiative to require referendum of tax purposes. I mean, if you look at what is trying to be accomplished is that you are trying to provide services of government and you're trying to find a way to pay for services of government and you need to levy taxes in order to pay for it. And what this says is that now in order to levy taxes, you've got to go to a vote of the people, and I don't know what public policy is really served by having to have that referendum required.

CHAIRMAN DEDDEH: I don't know. Ask the proponents. Mr. Farr, as you were asking of the general tax and special tax. When several counties raised their half-a-cent sales tax for the purpose of transportation, which was really passed by a simple majority vote, and yet this provision -- if this was in place -- you would have required a two-thirds majority vote.

SCHAAFSMA: No, because the motor vehicle fuel taxes --

CHAIRMAN DEDDEH: Does not go into that category?

SCHAAFSMA: -- are specifically treated as general taxes.

CHAIRMAN DEDDEH: But we raised that half-a-cent sales tax.

SCHAAFSMA: Oh, I'm sorry.

CHAIRMAN DEDDEH: Sales tax, not fuel tax.

SCHAAFSMA: What we've done in that case though, is that those are treated as general taxes for the general purposes of those agencies.

ASSEMBLYMAN FARR: What you really have here is the state realizing that there's this tremendous congestion problem and everybody's furious with that. They duck when it comes to whether that is a special tax, but when you try to apply it for libraries or mental health, it's immediately called -- or jails as you did in San Diego County -- it's called an immediate -- it's called a special tax.

SCHAAFSMA: I think there's a certain amount of ambiguity that would remain.

[Laughter]

CHAIRMAN DEDDEH: Mr. Farr the jail tax in San Diego is now in litigation.

ASSEMBLYMAN FARR: I know, but they didn't litigate the simple majority vote on transportation issues.

CHAIRMAN DEDDEH: Yeah.

ASSEMBLYMAN FRAZEE: Mr. Chairman, just on that point, I think the bigger question there in the court was, was the new entity established really independent of the county? And, you know, I think the trial court initially said it's got the imprints of the county all over it and so therefore, it isn't a new one, and that probably didn't happen in the case of the transportation

because it was clearly a separate agency. I think that's the question in those two.

CHAIRMAN DEDDEH: All right.

ASSEMBLYMAN FARR: We ought to submit a last proposition to the ballot here to really -- we ought to just require that all budgets be voted on by the people.

CHAIRMAN DEDDEH: Well, that's the intent of this. That's the intent eventually. You're going to have one.

ASSEMBLYMAN FRAZEE: We can go home.

ASSEMBLYMAN FARR: And budgets of nonprofit organizations that sponsor initiatives ought to voted on by the electorate as well.

[laughter]

CHAIRMAN DEDDEH: All right.

CORNETT: Before I leave the table, you had asked one question I only responded to half of the question earlier and that was, can the Legislature amend those two earlier measures dealing with anti-drug funding. I believe I only answered on Prop. 129, which the answer to that is, yes with a majority vote. On 133, I didn't answer on, that's the half-a-cent sales tax and the answer to that is, yes, with a two-thirds vote as long as it furthers the purposes of the measure.

CHAIRMAN DEDDEH: But, nickel-a-drink requires four-fifths of a vote of the --

CORNETT: Four-fifths, but it also says that only as long as the amendment is consistent with the purposes of the measure so what that would mean, I'm not sure.

CHAIRMAN DEDDEH: It would mean enhancing it. Any further questions of the Legislative Analyst? Thank you very much gentlemen. Would you stick around in case we need -- Department of Finance. We would like to interact with the public a little bit, too, after Finance. So I'm going to ask you to summarize as much as you can, to the best of your ability on all four propositions.

LONNIE MATHIS: Okay. Clearly, our testimony will be relatively short. We thank you. I am Lonnie Mathis with the Department of Finance. We thank you for inviting us to participate. We have provided your consultant with analyses that we have done on all four measures. These analyses are done prior to collecting the signatures and so on as part of our obligation. We provide this information to the Attorney General. He uses this in the titling of the measures as they go out to collect the signatures. We do this jointly with the Leg Analyst. As I looked at your staff analyses, in reviewing those analyses that we've done; any differences in the revenue estimates are very small. They were very insignificant. So even though it has been a few months, the estimates of the impact have stayed relatively the same. They haven't changed any extent.

We really don't have anything on each one of them. We really want to listen to the discussion. We will be here if you have any questions.

CHAIRMAN DEDDEH: Do you agree -- let me ask you this. You listened to the Analyst analyze all four propositions. Are you in agreement with their statements? Do you have anything to add, let me put it this way?

MATHIS: Well, I think the information we have in the analysis, that we've done, we have gone through those and at that time we did have a thorough review of it and our position is stated in those analyses. Clearly we don't have anything more current than that. So a lot of the issues that have been raised, we haven't thoroughly reviewed them.

CHAIRMAN DEDDEH: Any question of Finance? Mr. Farr.

ASSEMBLYMAN FARR: Does Finance have any concerns with any of these initiatives as to the ability for California government either at the state or local level to be able to respond adequately to the future needs of California because of the restrictions that are imposed in any of these initiatives?

MATHIS: Well, I think as you've -- as some of the discussion has gone, there's clearly -- I know when we did our analysis, as I said, we completed our analysis. It's been a few months now. But, in those analyses we expressed some of the areas that were open to interpretation and clearly there's areas there -- I don't think that we can really speak to them, you know, very clearly, because some of them -- our answer in a lot of cases would be a lot like the Leg Analyst was where a lot of them really aren't that clear.

ASSEMBLYMAN FARR: You are the Department of Finance, or representing them and that Department is responsible for the whole public financial monitoring of government. It just seems to me that philosophically you'd have some concerns about these initiatives in addition to the technical problems you raise.

MATHIS: You know, we haven't -- we clearly don't take a position on these measures. When you start talking about concerns it sounds like, you know, you've taken a position and you have a problem with them and clearly we have not taken a position --

ASSEMBLYMAN FARR: Oh we know the position on it. Finance never takes a position on anything around here either in the Legislative arena until --

ASSEMBLYMAN STEVE PEACE: They've taken a position on a few of my bills.

[laughter]

ASSEMBLYMAN FARR: The position is a two-worded position. Two-lettered position. I just thought that maybe you would have reflected on it with all your wisdom of government that these might have some problems for California to administer and raise a lot of concerns for you.

MATHIS: Well, as I said, the analyses that we did a few months ago did identify some of the areas that, you know, could be potential areas of interpretation and that information clearly is available. We provided the consultant with all those analyses.

CHAIRMAN DEDDEH: Probably you're not required or asked to take a position and I agree with that and I support that, but some of these initiatives we've seen and are continuing to see are a disaster, an absolute disaster. And at some time the Office of the Governor and his chief spokesman, spokesperson whoever he or she may be, ought to state that if proposition such and such were to pass, these are the consequences folks and something needs to be said at some time. I don't know. I look at these propositions and people probably would be voting for them. I can almost assure you; law and order, because that's what they understand, but do we have the money to fund them.

The McCarthy bill raises half a cent, that's fine. But, how about the Attorney General's. We don't have the money to fund it. At some time somebody with the authority of the Governor ought to speak up and say, "Look, this is a disaster, folks." Now, I don't know whether he's taken a position or not taken a position. That's -- why do we take position. I mean my position and all the members sitting here, there's no different than that of the Governor or the Lt. Governor. We're also politicians, office holders, and we speak out. We're asked to speak out. How do you stand on this proposition or that proposition. And I'm going to tell them, they all stink and they do, they do.

At one time I took that position myself, on all five insurance propositions, all five of them. What a disaster, all five. Somebody has to speak out. I mean, we're nobody but the Governor has the prestige of that office and ought to speak out and say this is what's going to happen to the state if they were to pass. Any questions? All right now, is there anybody here from

the Attorney General's Office?

ANONYMOUS: There is a statement that has been provided to the committee.

CHAIRMAN DEDDEH: All right. The Attorney General apparently has sent us a statement. All right now, let's take -- is there any other proponent? I'm not opening for debate, but we'll get one or two proponents, one or two opposed to these propositions. Let's take one proposition at a time. Proposition 129, Comprehensive Crime Reduction and Drug Control. Franchise Tax Board, do you want to say anything at all on this?

KAREN BEEDING: There are some technical differences between the proposition and the legislation that was just recently chaptered, but the proposition doesn't become operative until 1991, so any differences or any technical difficulties can be taken care of during the '91 legislative session.

CHAIRMAN DEDDEH: All right. Opponents -- is there anybody in the audience who wishes to speak and tell us why that Proposition 129 ought not to pass? Are you addressing Prop. 129?

LARRY MCARTHY: Yes, Mr. Chairman, Larry McCarthy with the California Taxpayers Association. We signed the ballot arguments in opposition to Proposition 129.

CHAIRMAN DEDDEH: The reasons for the opposition?

MCCARTHY: Together with the other measures that you've looked at this afternoon, there's a manipulation

of public finance through the initiative process. And California has hit an all-time high with this November ballot, not only for their taxes being raised dramatically through the initiative process, but the budgets that you as the Legislature will have to deal with will be dramatically impacted. There is earmarking and over commitment of public funds. I heard a joke, somebody was trying to be funny saying that we've committed 150 percent of the state budget, you know, through these --

CHAIRMAN DEDDEH: Are you with Cal Tax?

MCCARTHY: That would be funny, if it weren't so close to true.

CHAIRMAN DEDDEH: And how about Prop. 136? Are you supporting that?

MCCARTHY: Yes we are. We were involved --

CHAIRMAN DEDDEH: Is that a good public policy you think?

MCCARTHY: Absolutely.

CHAIRMAN DEDDEH: All right. I'm just asking. We'll get you back again on 136.

MCCARTHY: Proposition 129 is, as you've heard, going to cut a huge hole in the current state budget if it is enacted and the result is going to be -- you'll either have to slash programs or raise taxes in order to meet the commitments that are made in that initiative. So it's a very serious problem.

CHAIRMAN DEDDEH: Any question of Cal Tax? Mr. Farr?

ASSEMBLYMAN FARR: I think all of these things -- we're on the Titanic of state government and we're going to watch, if these things pass, government sink. And what you've just seen here is what is the problem. On one side the people came up and said, "We've never funded these services the people demand so we're going to go out and find a tax to fund them with." And the other side, the reason we've never funded them is because your side has said, "Don't raise any taxes." And that's the system that's broke.

We have half the people that want more money and half the people that don't want to spend any money and we're locked in the middle because it requires a two-thirds vote. It's generated a chaos. The chaos goes out and says, "Ah-ha, the way you steer yourself through this is you have a designer initiative." You go out and find out what people want the money spent on. Then you go out and find some sexy thing to tax for it. Alcohol, whatever, and you know, then you spend it on law enforcement.

These designer initiatives in total, sum total, break things down. I think that this is -- what you're saying is you don't like the side that finds that government is unfunded and finds a process to fund it. But, at the same time, you supported an initiative which says government shouldn't raise taxes unless it's extraordinarily difficult to do so.

MCCARTHY: No, I think you missed the point. The

Proposition 136 -- and we'll go into this in greater detail -- encourages general taxation. Encourages taxation where there are no strings. Where elected representatives have greater capacity to use their judgment as to where the dollars needs to be allocated --

ASSEMBLYMAN FARR: As long as it's voted on by the public.

MCCARTHY: The taxes that are imposed by the Legislature require no popular vote. That would still be the prerogative of the Legislature to raise --

ASSEMBLYMAN FARR: We delegated that authority in certain areas to local government to go raise taxes. For a hundred years in California that worked beautifully, and all of a sudden you're coming along and saying a hundred years of experience isn't good. We're going to change the whole rule. We're going to make all those taxes voted on by the people at the local level.

MCCARTHY: There's overwhelming support for that, for popular votes for local tax increases. What this does is to say that --

ASSEMBLYMAN FARR: If we submit a budget of your nonprofit entity, maybe we ought to have that --

MCCARTHY: If we got any taxes -- if taxes funded us maybe that would be appropriate. What needs to happen, is that we need to encourage general taxation in the state. One of the reasons why the state budget is in such dire straits is because of the earmarking and the constraint that is placed on the state budget

through the initiative process.

ASSEMBLYMAN FARR: Do you support any right now? Could you recommend to us one general tax that you would support increasing right now?

MCCARTHY: I think that if you wanted to get into a dialogue in terms of what kinds of constraints might be taken off of current state spending -- I mean there's all kinds --

ASSEMBLYMAN FARR: Wait a minute that's what -- there are no conditions on the way you stated it. It was that you would support general taxation. This is going to encourage it.

MCCARTHY: This encourages general taxation, yes.

ASSEMBLYMAN FARR: Does your organization support any new general taxes?

MCCARTHY: We have supported the gas tax. We've supported a number of taxes. But the point is is that we need, before ever we start raising taxes in that fashion we need to look at the current state budget which is structural gridlock.

ASSEMBLYMAN FARR: That's not what 136 says. It doesn't say anything about the current state budget.

SENATOR CALDERON: We're on 129.

CHAIRMAN DEDDEH: We're on 129, all right.

UNIDENTIFIED: Back up again on 136 or do you want

to --

CHAIRMAN DEDDEH: Do you want to stay on 136 or -- it's up to the committee. You want to stay on 136? Fire away.

ASSEMBLYMAN STEVE PEACE: It's okay to follow that line of questioning?

CHAIRMAN DEDDEH: Yeah, get your guns here.

ASSEMBLYMAN PEACE: I'd like to hear --

CHAIRMAN DEDDEH: I want to hear the proponents of 136 -- I can't believe you're supporting 136, but that's all right.

ASSEMBLYMAN PEACE: I'd like to hear the explanation on the manner in which 136 encourages general taxation. One of the things that -- reading it a little more carefully it's interesting some times things have effects that we don't see at fist glance. Is it -- and you can address this in your statement. Is it accurate to say that what 136 does is allow the Legislature to raise taxes or lower taxes, whatever under the current rules, it has no changes to that, but precludes the public from -- by way of the initiative process or what not -- from raising taxes by other than a two-thirds?

DAVE DOERR: No.

CHAIRMAN DEDDEH: Special taxes.

ASSEMBLYMAN PEACE: Only special tax is two-thirds.

DAVE DOERR: We view that almost entirely the opposite of what --

CHAIRMAN DEDDEH: Could you identify yourself?

DOERR: Dave Doerr, Cal Tax.

ASSEMBLYMAN PEACE: And you support 136? Tell me what you --

DOERR: On that issue, we firmly believe and this issue is before the Supreme Court so it's, you know, there's two different opinions. Our opinion is that Prop. 13 -- if you read Prop. 13, it prohibits taxes by the initiative. Period. So what this measure is doing is allowing people to raise taxes by the initiative rather than curtailing it.

ASSEMBLYMAN PEACE: But it requires a two-thirds vote, right?

DOERR: The voting requirements are the same that have been imposed on local governments. So that the voting requirements that were there for local governments --

ASSEMBLYMAN PEACE: Which is two-thirds.

DOERR: Majority for a general tax, two-thirds for special tax.

ASSEMBLYMAN PEACE: Okay. It's only two-thirds --

DOERR: As we see current law, Prop, 13 says you

cannot raise tax by the initiative.

ASSEMBLYMAN FARR: That's historically, relatively new.

DOERR: Well it's Prop. 13. So what we're saying, if you look at this in context where we are now, we think it's providing more flexible.

ASSEMBLYMAN PEACE: That's a legitimate view. I'm not so sure we're right in terms of viewing this as --

DOERR: This issue is before the Supreme Court so we'll have --

ASSEMBLYMAN PEACE: If you accept that premise, I'm not so sure that 136 actually doesn't put more power in the hands of the Legislature, at least. And, if we are willing to bite the bullet and make the decisions rather than hand it off -- rather than duck and hide and hand it off to the public. I think this proposal reinforces the power and opportunity of the Legislature to act responsibly in terms of having a tax and spending package that is in balance and if that means raising taxes, having to take responsibility to do that. Because it makes the relative ease of having taxes done through the public sector or by the Legislature makes the Legislature the point of least resistance as opposed to the point of greatest resistance and discourages us from handing off the responsibility some place else.

ASSEMBLYMAN FARR: But what you really do if you have other entities that have to carry on services at the local levels, since you haven't delegated to them

powers, and you put referendum on all those powers which essentially nullifies their ability to carry out their function, the only easy revenue source for them is fees for service. And, we're going to just meter everything that government does in California.

ASSEMBLYMAN PEACE: How does this change that? Why is 136 responsible for that?

ASSEMBLYMAN FARR: It's making what's now a -- well, that's the question I asked. It raises a couple of issues as to -- one on the levy, which if you're up here, you can respond to.

DOERR: I agree with Mr. Schaafsma that those are interchangeable. Want me to talk about the local government piece?

SENATOR CALDERON: Yes, because this does apply to local government which has a different impact that applies to say a cigarette tax and alcohol tax.

DOERR: And you have to look at this again in perspective of where we are now and where does this take us? And right now we have a system where all local government except charter cities are bound by voting requirements that require a majority vote for general tax, a two-thirds vote for special tax period. That's for general cities, for counties, for special districts, for school districts. Now for all those local jurisdictions, this initiative provides more flexibility for them because it provides that if there's an emergency, they can raise a tax without going to a vote on an emergency. So they get a little more flexibility --

ASSEMBLYMAN FARR: Who determines the emergency?

DOERR: The Governor determines the emergency. If there's an emergency, and it's called by the Governor, they can raise taxes -- so it gives them more flexibility to respond to --

ASSEMBLYMAN FARR: They can only raise it to -- give me an example. The earthquake occurred. The Governor and the President declared an emergency. What tax could local government raise?

DOERR: Whatever tax they're authorized -- the jurisdictions are authorized to raise under current law -- whatever they're authorized --

ASSEMBLYMAN FARR: Give me an example.

FRED MAIN: Sales tax under your authorization, Assemblyman Farr, that's gone to the counties for those populations of under 350,000 would have the authority to levy that sales tax without a vote.

ASSEMBLYMAN FARR: No, because my legislation --

MAIN: This is an initiative that would be overriding.

ASSEMBLYMAN FARR: My Prop. 62 [sic] would say that you have to have a vote of the people.

MAIN: This is the initiative that subsequent that could override that.

DOERR: So this gives them more flexibility.

CHAIRMAN DEDDEH: Why do think it's fair for your Proposition, 136, to pass by a simple majority vote, and next to it on the same ballot, the nickel-a-drink, whatever the number of the proposition is, that would require two-thirds majority vote? Why do you think this is fair?

DOERR: We don't think -- we think existing law --

CHAIRMAN DEDDEH: Isn't that what it --

DOERR: No, no, no. We think existing law prohibits the nickel-a-drink from passing. It's not -- the constitution says you can't raise taxes by the initiative. So whether this passes or not, we believe the law reads -- if you read Prop. 13, in the section of Prop. 13 --

CHAIRMAN DEDDEH: Your proposition says that effective immediately, tonight, that any other proposition --

DOERR: We're giving them -- the people -- the authority to raise taxes by the initiative, and it's by a majority or two-thirds vote. We don't think they have that authority now.
And that's Prop. 13.

CHAIRMAN DEDDEH: All right we're going to hear -- Any question of the proponents? One at a time. Okay. Dave, are you through?

DOERR: Yes.

FRED MAIN: Fred Main, representing the California Chamber of Commerce. The only additional comment in support of Prop. 136 that I'd like to make is the issue of the historical application of the two-thirds vote on local tax measures.

Prior to Proposition 13, to levy additional property taxes in order to support general obligation bonds, in effect a special tax, has always required a two-thirds vote in California. That has been upheld by some of the very liberal California Supreme Courts in order to protect one group of taxpayers against increasing property taxes to pay for services of other individuals. We don't see that as much of a distinction from what Prop. 136 is doing in adopting the definition of special taxes, and so there is much more of a historical precedent for the two-thirds vote than I believe has been given credit in some previous testimony.

ASSEMBLYMAN FARR: Well, in the disaster you just responded to you've -- I mean there are a lot of conditions precedent to doing that. First of all, the Legislature, if there's a disaster, has to be in session because you have to waive these provisions by a two-thirds vote of each house and a Governor's signature.

DOERR: That's just for the state part.

ASSEMBLYMAN FARR: Where -- show me.

DOERR: One section deals with the state and then you go down another one deals with --

ASSEMBLYMAN FARR: I'm reading Section 8. Excuse me Section 7, I guess it is.

DOERR: The provisions of 4(a),(b) may be suspended by two-thirds vote of the Legislative body.

ASSEMBLYMAN FARR: Which are --

DOERR: So that's the bottom part of that Section 7.

ASSEMBLYMAN FARR: I don't have the whole text there, but walk through it. Under this scenario, if a natural disaster occurred -- and I guess it has to relate to earthquake, fire, flood or some other natural disaster, declared by the Governor -- then you would say that that would trigger immediately an ability of the local government to determine that they could raise a quarter cent or half cent sales tax if the Legislature gives them that authority and we've only done it for the rural counties not for the --

DOERR: As I understand it.

ASSEMBLYMAN FARR: Yeah, that might be -- with this constitutional amendment, then will you support my bill? We give that authority to the other counties, because you have this situation under this that large counties where all the people need emergency relief won't have any ability to get it.

They have to be granted the authority to raise the tax. This doesn't give them the authority to raise a tax. It gives them the authority to levy it. If we've given

them the authority. We granted them the authority.

Local governments can't just say, "We want to raise taxes. Let's decide which tax to raise." We can do that. All they can do is to levy a tax if we've given them the authority. That's the argument we had on the floor the other day. And my bill says to all the large eight counties, the ones that aren't provided is that we give you the authority to use a half-cent sales tax. You put that in your tool box if you want to use it. Without giving them that authority, they can't do it under the emergency provision. Is that correct?

UNIDENTIFIED: That's correct.

MAIN: Mr. Chairman, because of the action of the Legislature in solving the budget solution which granted counties the same authority as charter cities in taxing authority, if this measure were to pass, then they would have, and there was an emergency declared, they'd have the business license tax and utility users tax in addition because that authority has been granted. So they would have emergency authority with a vote of the council or the board, excuse me without a vote of the people in an emergency situation. They would need to do the sales tax on additional authority for the sales tax for the large counties, I believe.

ASSEMBLYMAN FARR: So the businesses in your scenario -- the businesses that have been destroyed and need financial relief are the only way you can find financial relief -- by levying a business license --

MAIN: Utility users tax.

DOERR: Well, it's up to the Legislature to decide because you're the ones that'll --

ASSEMBLYMAN FARR: We're trying to decide and you're opposing it, that's the damn problem.

MAIN: I don't believe we opposed, speaking for the California Chamber of Commerce. We didn't oppose the recent grant of authority of the business license and utility user's tax, expanding that. So, I don't believe that it's correct to say that we've opposed all of the taxes. In fact, the Chamber, at least, since about August of last year, has supported about $4 billion in tax increases that the Legislature has passed in one form or another.

ASSEMBLYMAN FARR: I don't want to belabor the point, but we have a situation in California now that allows rural counties -- 43 of 58 counties -- to go out and levy a half-cent sales tax as long as that levy doesn't bring them over seven percent. You say that -- and that requires a two-thirds vote of the Board of Supervisors and a majority vote of the people.

MAIN: Correct. Your bill would have expanded --

ASSEMBLYMAN FARR: And, what you're saying is that this constitutional amendment will allow that board to use that tool without a vote of the people, if in fact an emergency has been declared.

MAIN: I believe that that --

ASSEMBLYMAN FARR: For 43 counties. What do you do about the other counties that are in the same disaster?

MAIN: Well, maybe your bill granting it to the other counties should be specifically just in the context of an emergency.

ASSEMBLYMAN FARR: Economic?

[laughter]

MAIN: No.

CHAIRMAN DEDDEH: Let's hear from the opponents of 136. I think we've heard enough from the proponents. We know what it does. Let's hear the opponents to 136.

UNIDENTIFIED: Tell us why we should vote against it.

LENNY GOLDBERG: Well, let me start on just the issues that have been raised here. With regard -- the disaster issue and emergency issue is only a very small part of this issue which is very minor. In fact, cities now --

UNIDENTIFIED: Identification of the witness.

GOLDBERG: Oh, I'm sorry, Lenny Goldberg, California Tax Reform Association. Cities right now have the power to adjust -- to balance the budget a utility tax, a hotel tax, a business license tax without a vote of people. This makes that completely impossible whether you're for that or against that. The fact is that a local governing body -- cities have very little powers as they stand. They can't change property taxes. This would take away that power.

We apparently just granted the power to the counties. Dan Wall may be here -- but we granted that power to the counties to also take those actions for the unincorporated area -- the counties that this would nullify that and require a vote of the people. So at the local level, whatever minor taxing powers the cities, the charter cities, and now the counties as by grant of the Legislature have will be taken away.

One of the really very difficult issues in 136 which I think the analysis here is excellent because it points out all the incredible ambiguities here. There's a whole question of special districts. That came up in San Diego with the jail district. I spoke to San Diego City Council relative to open space district and whether the -- which is a long-standing district in San Diego -- whether or not that will be affected by a two-thirds vote requirement. It is my very strong reading of this, and I don't know if it's resolvable, that the ball park in San Jose -- I guess this should be told to the South Bay but not to San Francisco, that this measure would nullify the attempt by Santa Clara County.

I believe they have a joint powers agreement which says we can increase the utility tax for a ball park. No way can they ever get two-thirds for that. They probably can get a majority for that. If there is ever such a thing as a special tax, it is a utility tax put together by a number of cities to build a ball park in Santa Clara County. If this measure is to mean anything, it will require a two-thirds vote on that and nullify the ball park. So any little bit of flexibility left for local government, and Jim Harrington from the League of Cities, can expand on that, will be taken

away.

Now with regard to the issue of earmarked taxes at the state level, the irony of this thing is that the one thing that people say, "Oh we shouldn't be earmarking these taxes. We lock in the expenditure patterns. That's a bad thing, so maybe 136 is a good thing because it will eliminate that." It doesn't do it. The only thing it does is that if it is a statutory initiative, that earmarks the money, it will require a two- hirds vote. However, just about every initiative, Proposition 99 said it was constitutional because it said they were exempt from the Gann limit.

Prop. 134 went constitutional as well. That in the future if say, health care, the doctors and hospitals want to pass an initiative for health care by raising taxes, which is one of the many, many things that are on the table, all they need to do is carry the number of signatures required for a constitutional measure and put in the current language of 136, notwithstanding this two-thirds vote requirement. The health access initiative of 1992 is exempt from that. So it doesn't do what the proponents say is the one thing that may be attractive at the state level for Legislators. That is, we don't like earmarking. Well, all you have to do is go constitutional and you've exempt yourself.

What it does do is lock down -- is possibly knock out the other initiatives on the ballot. Although the Supreme Court took our case to -- which was based on a Legislative Counsel Opinion. The Opinion said that it was a violation of single subject rule. The Supreme Court took the case. They then said we don't have -- in pre-election review -- They then said, "We don't have

enough time to review this." So four justices said, "We want pre-election review." The briefing schedule is such that they can't review it pre-election, but you can be sure they will review it post election.

Now, let me get to the one other issue which is the, this initiative, by the way, has been basically paid for by the alcohol industry which raised $2 million to put it on the ballot, and I think they got a bad deal because I don't it's going to knock out 134, but it does have a provision which does say we can't raise excise taxes which are earmarked. No special -- no this is the question of ad valorem versus excise taxes. No earmarked excise taxes will be any longer constitutional.

CHAIRMAN DEDDEH: What is your response to the fact that the constitution says you cannot raise liquor tax by initiative written I don't know when? And, the nickel-a-drink, whatever the number is, 134, a statute initiative.

GOLDBERG: No, it isn't. It's actually, they have some constitutional provisions. They exempted, as I understand it, your consultant can correct me if I'm wrong because I'm not an expert on 134, but as I understand it, it exempts itself from the Gann limit. It also exempts itself --

CHAIRMAN DEDDEH: Not the Gann -- the state constitution says, according to the opponents, that you cannot raise liquor tax by a statute initiative. You could raise it by constitutional amendment. That's why the Legislature is placing on the ballot a constitutional amendment.

GOLDBERG: So you're saying that 134 is statutory may be unconstitutional.

CHAIRMAN DEDDEH: I don't know.

GOLDBERG: Well, in that case then the alcohol industry in trying to knock out 134 with 136 got an even worse deal because they don't need to do it.

CHAIRMAN DEDDEH: Apparently.

[laughter]

GOLDBERG: The other piece of this is that --

CHAIRMAN DEDDEH: It's a good way to spend their money. That's all right.

GOLDBERG: With regard to the excise tax limitation, this is a permanent excise tax limitation. What it effectively says, that if we want to tax oil per barrel in order to pay for a fund for clean up, that is a special tax, special excise tax and therefore cannot be done -- becomes unconstitutional. We want to tax toxic chemicals and put it into a fund for clean up, we want to tax cigarettes and put it in a fund for health care, which is Prop. 99. We cannot do that. That would become unconstitutional. So what you have here is a real -- effectively a special interest --

CHAIRMAN DEDDEH: Are you saying that if the Legislature, by a two-thirds majority vote wanted to --

GOLDBERG: The Legislature could do it. You could

not do it by initiative. But actually -- let me -- I shouldn't --

SENATOR CALDERON: You couldn't do it by two-thirds vote.

GOLDBERG: I should read that again. I think the way it's written is that no special taxes -- whoops, wrong one. Let me look at that again, because I believe no special taxes period shall be used as an excise -- no excise taxes shall be special taxes. I don't believe it's only by initiative, but let me check that. This is with regard to ad valorem taxes. Martin, if you would check that.

Let me raise one other issue which was raised by Mr. Doerr because he said we don't have the power right -- this really increases flexibility because we don't have the power right now to increase taxes by initiative. That case is the Prop. 99 case. There is an argument that if you read Prop. 13 -- extremely -- now if you read Prop. 13, it says there's no power by initiative to raise taxes. That is before the Supreme Court.

CHAIRMAN DEDDEH: To raise what kind of taxes? Property taxes?

GOLDBERG: No, no. By initiative --

CHAIRMAN DEDDEH: You cannot raise --

GOLDBERG: It can be read that way, however, there is also a whole section of the constitution on the right of initiative and referendum. So there is a long, I

believe, my understanding a very long shot chance that Proposition 99 would be thrown out. If Proposition 99 is thrown out by the Supreme Court, then Prop. 136 might clarify that particular issue of the right to raise taxes by initiative. I would be extremely surprised if the Supreme Court threw out Prop. 99, the cigarette --

CHAIRMAN DEDDEH: Is 99 being litigated?

GOLDBERG: That is what is being litigated right now. If that were to happen, then we'd be in a --

CHAIRMAN DEDDEH: How about 98?

GOLDBERG: That's very much a long shot.

CHAIRMAN DEDDEH: How about 98?

GOLDBERG: 98 is, again, not my purview in terms of the litigation. I don't think it's being litigated, in fact. Oh, yes, it is with regard to inclusion of child care. So the question on ad valorem taxes, can the Legislature raise, say oil per barrel or toxic chemicals for clean up as a special tax. And, no I don't believe so. Section D, any special tax with regard to tangible personal property enacted on or after November 19 -- must be an ad valorem tax, therefore, that's -- it doesn't specify that that must be by initiative. It's basically no new ad valorem taxes may be imposed.

SENATOR CALDERON: Mr. Chairman.

CHAIRMAN DEDDEH: Senator Calderon.

SENATOR CALDERON: I think that's -- the main point

that you've raised is the fact that this applies only to statutory increases not constitutional amendments.

GOLDBERG: This is for statewide initiatives.

SENATOR CALDERON: For statewide initiatives.

GOLDBERG: Doesn't apply to local governments in serious ways, yeah.

SENATOR CALDERON: Which seems to me to be a serious flaw given the argument, the proponents that they support legislative review of which taxes should or should not be imposed. Is this clearly -- I mean is the language -- is there any dispute that this relates only to statutory taxes versus constitutional amendments?

GOLDBERG: I think what happens is that you may have a tax -- you take your tax to the ballot and say for health care. Then you put in a section that says that this initiative shall be -- which means you put that in the constitution. The measure itself might be statutory, the exemption from the constitution would have to be -- from Prop. 136 -- would have to be constitutional. So what it says, is you have to collect 650,000 instead of --

SENATOR CALDERON: Right, but I mean the main thing --

GOLDBERG: -- it doesn't get rid of the --

SENATOR CALDERON: -- the reapportionment initiatives about Sebastiani was knocked out on that basis. Seems to me to be a pretty big hole. I wonder

-- can we get the proponents back up here [illegible]

CHAIRMAN DEDDEH: Sure.

SENATOR CALDERON: Why you wouldn't want to, you know, cover constitutional amendments that would attempt to do what you are otherwise outlawing by statute initiative?

GOLDBERG: I think the problem is, is that you can't absolutely prohibit somebody from amending the constitution through the initiative procedure. It's a self-perpetuating activity. I think the difference --

SENATOR CALDERON: No, but if you amend the constitution to say that all initiatives raising these taxes shall require a two-thirds vote.

MAIN: Then to change that all you'd have to do is --

SENATOR CALDERON: To change you'd have to say, we'd have to change that constitutional provision.

MAIN: Correct. And that's actually Mr. Goldberg's point is that you can always change it by a subsequent constitutional amendment. Our position is --

SENATOR CALDERON: But, this doesn't apply to constitutional initiatives, does it?

MAIN: It would. You'd have to change -- to change subsequently, you would have to have a subsequent amendment saying that this tax is not a special tax and therefore it can be increased without --

GOLDBERG: Your next initiative you just do a one-liner.

DEDDEH: That's in 1992.

ASSEMBLYMAN FARR: That also ups the number of signatures you need.

MAIN: It ups the number of signatures, and it also does something else and that is, we've been working on a lot of initiatives lately on the opposition side and people do pay more attention to the fact of changing the constitution than they do on the initiative. This is the voter and so it makes it a more special concern as you are arguing on the tax.

SENATOR CALDERON: But what he's arguing is that the next initiative would simply nullify this constitutional amendment and supplant it with a new constitutional amendment.

UNIDENTIFIED: If they can get enough signatures.

GOLDBERG: Prop. 99

SENATOR CALDERON: With respect to a new tax. All right now I understand.

GOLDBERG: Let me raise one other issue which is the question of the revenue neutral vote versus majority versus two-thirds vote. My reading of this in terms of -- if you look at the changes on it right now just to give one current example, Senator Morgan's bill with regard to the infant care tax credit is a revenue

neutral bill requiring a majority vote.

The 1987 tax reform act ostensibly revenue neutral bill requiring a majority vote. Again, the language in this is very unclear, but it would appear if you look at what's taken out, if I were a court looking at it, I would say it looks like revenue neutral or not, every tax change that would increase anybody's rate even if it would decrease somebody elses rate, would require a two-thirds vote. Therefore, I would argue that tax relief for the ordinary taxpayer could become more difficult. It's really only special interest the cause of taxation that's protected here.

JIM HARRINGTON: Mr. Chairman, Jim Harrington with the League of California Cities. We would take very strong exception to Mr. Doerr's statement that this expands the authority. It severely restricts our authority particularly since I think there's little or no debate as to whether the 84 largest cities, that is, the charter cities are exempt from the current vote requirements of Prop. 62. This initiative would, in fact, include the 84 charter cities within its provisions.

Also there, I think, is compelling litigation in court arguments that say that even general general law cities are not subject to Prop. 62 because of the constitutional provision that there shall be no referendum on a tax. So many city attorneys are taking the position that under existing law, the city council has authority to levy a tax.

Unfortunately what Prop. 136 does is take us backward a great deal and restricts us considerably, and in essence where we're headed at the local government

level is toward the old town meeting concept where before you can do anything you've got to ask everybody for approval.

If you translate this to the state's budget problems that you just went through; imagine if you will, that you were now a city council, but you were trying to solve the state's budget problem in July and you finally after all the negotiations, come upon some revenue measures that everybody can agree on, but you can't do it. You've got to then subsequently take it to an election. Maybe in November and maybe, in the case of a city, we're just talking thousands of dollars, just a slight increase, a slight adjustment in the revenue just to balance the budget, but yet we would have to go to the voters every time. Those are our policy concerns.

There's also some very practical and equity concerns, and I find it a little ironic and perhaps even poetic justice that the Chamber and Cal Tax in supporting this measure. I think the practical effect of this will be that the voters will not vote to tax themselves. But they will vote to tax business and nonresidents. So what this will do to the extent that cities will be able to increase taxes is going to shift the burden of taxation far more on, not the resident voters, but on businesses.

SENATOR CALDERON: I have a question, Mr. Chairman

CHAIRMAN DEDDEH: Mr. Calderon.

SENATOR CALDERON: Now it may have been just the matter related to -- in connection with this issue, but

is there a constitutional challenge of Prop. 13 right now pending before the U. S. Supreme Court?

GOLDBERG: No challenge has yet gotten to the U. S. Supreme Court. There were three challenges on equity grounds. One was a commercial property. Macy's versus Contra Costa County.

SENATOR CALDERON: The new homeowners versus old homeowners.

GOLDBERG: One new homeowner versus old homeowner. One commercial purchaser of a home in San Diego County. Northwest Financial -- all on the inequity ground. There was a U. S. Supreme Court ruling of a West Virginia case; Webster County versus Alleghany Coal in which they ruled that the inequities -- the welcome stranger system used by West Virginia is now unconstitutional. They also had a -- Renquist had a footnote which said, "We do not, by this decision say anything about Prop. 13." So it's anybody's --

UNIDENTIFIED: But those cases are moving up now.

GOLDBERG: They're moving towards the court. It's anybody's guess what's going to happen with the U. S. Supreme Court on Prop. 13.

CHAIRMAN DEDDEH: Thank you very much. Let's take the other propositions: 133, California for Safe Streets. Anybody who wishes to speak on that. That's the proposition by Leo McCarthy. Want to say anything? Richard?

JOHN ABBOT: I'll be very brief. We do see some

concerns with Proposition 133. Typically you do have certain exemptions when you raise a tax rate, but there's nothing that we feel that we couldn't take care of with ad-on or follow along legislation next year. The only concern that we have about the initiative itself has to do with the phrase on page 22 which is found in this section, subsection C(1) of the allocation provision and it has a phrase in there, "...revenues subject to Article 19." And we don't understand what this provision is doing in there and I was hoping there would be someone from the Lt. Governor's Office who can answer that. We're inclined to think it's surplusage because there are no revenues subject to Article 19 that are -- the allocation of which would be governed by this section. So that's our only concern about the initiative itself.

CHAIRMAN DEDDEH: Okay, any questions. Go to another one, 134.

LARRY MCCARTHY: We have a -- we're in opposition to Proposition 133. One of the big problems with that is it's temporary tax. It's a four-year tax; however, because of Proposition 98, we think that schools are guaranteed 40 percent of the revenue that is produced in a year and that it then becomes a permanent part of their funding base. The tax ceases in four years but the commitment to schools goes on. So it will come to the Legislature to either cut programs or to raise taxes in order to meet that ongoing commitment.

CHAIRMAN DEDDEH: That's why initiatives, even if they're conceived in heaven, they should not ever pass. Bad public policy to run government by initiatives. All right, alcohol, 134, proponents or opponents. Opponents

please step forth.

UNIDENTIFIED: Proponents.

CHAIRMAN DEDDEH: Doesn't matter. You're for it.

UNIDENTIFIED: We're against.

CHAIRMAN DEDDEH: All right.

JOE DEVINEY: My name is Joe Deviney. I'm the President of Taxpayers for Common Sense. We strongly oppose Proposition 134 for a couple of reasons. Firstly, we think it's bad tax policy and bad public policy as was mentioned earlier with respect to this same proposal. This proposal, if it's enacted right off the bat, requires the state to spend $480 million from the General Fund just to get it -- within the first 18 months, just to get it going. It raises about $730 million, requires the State to spend about $2.8 billion. I guess our question is, where is that $480 million coming from? That's the biggest problem we have with it.

CHAIRMAN DEDDEH: Would you equate this as a user fee? If you don't drink, you don't pay anything. If you don't drive, you don't get to buy gasoline, you don't pay any gasoline tax. Isn't that a user fee?

DEVINEY: Well first of all, there is a tax on alcohol within this bill, but that's a very small measure of the requirement on the state to spend money. It's really a tax on every taxpayer, because it requires --

CHAIRMAN DEDDEH: How's that?

DEVINEY: Because it locks in the spending currently of $2 billion, which would not be subject to negotiations in times of budget problems. It also requires the state to escalate the spending in these programs to maintain per capita levels of service, and that would require a cost-of-living adjustment and an adjustment for the growth of population.

CHAIRMAN DEDDEH: I see.

DEVINEY: And that's specifically not allowed to be paid for by the alcohol tax. It would have to come from the General Fund or from cuts in other programs.

CHAIRMAN DEDDEH: And you, sir? Do you want to state your name, also?

BOB HARTZELL: I'm Bob Hartzell. I'm President of the California Association of Wine Grape Growers. I know you are under some pressure of time. A statement was made earlier by the Analyst that this would amount to 25 cents a bottle on wine. I want to clear that up because I don't that that's accurate. The tax is levied on wine at the rate of $1.29 a gallon under this initiative proposal. It's paid at the time the wine leaves bond at the winery. So the winery itself actually pays that tax.

Now at that point, the winery can absorb that tax internally in its cost of business. It can pass it forward to the consumer or it can pass it back to the grape grower in reduced grape prices and it'll flow wherever the resistance is less. So the presumption is

always made that it's going to move ahead, and that's where the nickel-a-drink comes out of. In reality, most of this will probably end up back on the back of the grape growers of the state. Because the grape growers are price takers, and we all know the competitiveness of the wine market. So, when you talk a nickel a drink, that amounts to $57 a ton if it all were to pass back to the grape grower. And most grape growers in the state, the average price was $300 last year.

Growers in the counties from essentially San Joaquin to Bakersfield, average something in the $150 to $175 a ton range. Therefore, at $57 a ton, if it were all to pass back to the grape grower, it would be an enormous burden on that segment of agriculture in California. Taking the other side of it. Suppose it were to all pass forward to consumers. Consumption would drop and according to a study by Dr. Dale Hine at U.C. Davis, there would have to be about 21,000 acres of grapes in this state abandoned because consumption would drop. There wouldn't be the demand for those grapes and therefore you'd have about 21,000 abandoned acres of grapes. So when we talk a nickel a drink; it's really a tax on the farmers of the state, the grape growers of the state.

CHAIRMAN DEDDEH: Okay. And you think that people will drink less because of that if that passes?

HARTZELL: Very definitely.

CHAIRMAN DEDDEH: Well, you know there are some groups that would like us not to drink at all.

HARTZELL: That's true.

CHAIRMAN DEDDEH: Prohibitionists. Maybe this is our way of doing it.

SENATOR CALDERON: Will this apply to Ripple?

[laughter]

CHAIRMAN DEDDEH: All right, thank you. Now let's hear from -- Education is involved in this?

KAREN YELVERTON: I am Karen Yelverton with the California School Boards Association. I've been asked to represent the educational community as it relates to our opposition to Proposition 134. I do have a prepared statement that I'll provide copies. I don't have those with me today. I'll get them to you in the morning that brings it all out in specific detail. Based on the timeline, I'll just hit on four specific points.

As you would probably expect, first and foremost, the educational community is frustrated and as a result is opposed to Proposition 134. By removing those revenues or taking the new revenues that would be generated by Proposition 134 and putting them in a separate special fund; by doing that and not providing those receipts into the general fund, as a result they would not be covered under Proposition 98 and thus, schools would not receive any of those new revenues into their program.

Second of all, as we have worked with the Legislature just this past June on Proposition 111, and our President was a co-chair of that campaign and worked actively to see that the voters passed Proposition 111,

to provide the revenues we need for transportation. Part of the discussion with the Legislature was that we would have a commitment that there would not be manipulations to Proposition 98 or any direct circumvention of Proposition 98. It's our feeling that Proposition 134 does that by not only separating it out of the General Fund, but specifically stating that schools will not receive any of those revenues.

Most importantly to us is the creation of what we would call a test two. And you've had that discussion with the Legislative Analyst and with Finance and others, and that is the presumed requirement that you maintain the existing level of funding and beyond for those programs that are targeted in 134. We feel that that encroachment that would in the long run affect the General Fund is bad public policy, and I wanted to start my remarks by reminding the committee that for many of the same reasons we did not endorse Proposition 98 as an organization. We were concerned about doing government in the constitution and by providing a guarantee even for public schools, and as a result we've remained neutral and did not participate in that campaign. Last and --

CHAIRMAN DEDDEH: You mean 99 --

YELVERTON: Proposition 98, excuse me. All these numbers, I'm so confused today. The California School Boards Association did not endorse Proposition 98 and had several concerns, but one of which was we did not believe it was good public policy to specifically set aside for one program. Programs on health care, mental care --

CHAIRMAN DEDDEH: Now that you have it, you like.

YELVERTON: Now that we have it, we have to acknowledge that it is the law. Yes, that is correct.

CHAIRMAN DEDDEH: All right.

YELVERTON: And last and final, and you've already alluded to it, Senator Deddeh, and that is the extreme protection that is provided to Prop. 134, and there is no safety valve as it relates to emergencies.

CHAIRMAN DEDDEH: That's right.

YELVERTON: At least there was some sense of responsibility under Proposition 98 and allowing that two-thirds suspension of the initiative in necessary emergencies for the state. In that 134 does not do that, we feel that that makes it even more onerous than it needs to be.

CHAIRMAN DEDDEH: Thank you. Is there anybody in the audience that feels compelled to speak on any of the balance of the initiatives: 129, 133, whatever it is? Equalization, Board, do you have some comments to make on that?

SENATOR CALDERON: Are there no proponents from 134 here?

CHAIRMAN DEDDEH: The proponents are laughing their way to the bank.

SENATOR CALDERON: I mean, they didn't have one person just to stand up and say, you know, "I support

134."

CHAIRMAN DEDDEH: I tell you all these propositions are bad. One is worse than the other, including your own. They all stink.

SENATOR CALDERON: They don't have anyone here to answer my question.

MARGARET BOATWRIGHT: Margaret Boatwright with the Board of Equalization. We have reviewed the language of 134. We can administer it even though it doesn't exactly track existing law. It does create a new class which is the fortified wine class, but we can change our returns to accommodate it.

CHAIRMAN DEDDEH: Anybody else feels compelled, driven by the Holy Spirit to testify. No, I don't see the Holy Spirit descending on anyone.

SENATOR CALDERON: What proof?

[laughter]

CHAIRMAN DEDDEH: All right. Thank you very much.

# # #

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California Legislature

Senate Committee

on

Revenue and Taxation

SENATOR WADIE DEDDEH, CHAIRMAN

JOINT HEARING ON PROPOSITIONS WITH

SENATE LOCAL GOVERNMENT COMMITTEE
SENATOR MARIAN BERGESON, CHAIR

ASSEMBLY REVENUE AND TAXATION COMMITTEE
ASSEMBLYMAN JOHAN KLEHS, CHAIR

AUGUST 15, 1990

SACRAMENTO, CALIFORNIA

Proposition 129

Comprehensive Crime Reduction and Drug Control Act of 1990

This measure, an initiative sponsored by Attorney General John Van de Kamp and Assemblyman Johan Klehs, raises income and corporation taxes and increases funding for drug interdiction and criminal apprehension.

The initiative is intended to

-- improve law enforcement and increase apprehension of criminal offenders,

-- improve the administration of criminal justice, to assure that those accused of crimes are dealt with fairly and swiftly,

-- provide the capacity to incarcerate those who commit crimes for the full measure of their punishment

-- reform the law to restore balance to the criminal justice system

-- provide special programs to deal with those who use and traffic in illicit drugs.

Tax provisions

The initiative conforms California's Personal Income Tax and Bank and Corporation Tax laws to changes made in 1987 and 1988 to federal tax laws. The major provisions:

-- restrict the deduction allowed for additions to a reserve for vacation pay. This deduction cannot exceed the amount of vacation pay that is: (1) paid to employees during the current tax year; (2) or vested by the end of the year and paid within 2 1/2 months after the end of the accounting year.

-- repeal the installment method for dealers in property and generally repeals the proportionate disallowance rule. Dealer sales of nonfarm real property used in a taxpayer's trade or business, or property held for rental income with a selling price above $150,000 are: (1) charged interest on the tax deferred to the extent that deferred payments from the dispositions of this property exceed $5 million in that year; (2) subject to income tax on loans used as collateral for installment payments due to the dealer; and (3) allowed to use the installment method to compute the alternative minimum taxable income. Allow use of installment sales method of accounting only for dealers in farm property, residential lots and time-share rights or interests.

-- require that income from long-term contracts be reported 90% by the percentage of completion method and 10% by another accounting method, usually the completed contract method.

-- add past service pension costs to the list of costs which must be capitalized.

-- require large family farm corporations with gross income greater than $25 million to use the accrual method of accounting.

-- treat publicly traded partnerships (master limited partnerships) as corporations for tax purposes. Certain income to exempt organizations from partnerships investing in debt-financed real property is subject to tax on unrelated business income.

-- redefine corporate reorganization provisions to prevent tax avoidance through use of "mirror subsidiaries."

-- expand the amount of gain on sale of inventories which must be taxed when a C corporation elects S

status. LIFO benefits become subject to taxation if inventories are sold within 10 years of the conversion from C to S status.

These provisions would be effective January 1, 1991.

Funding provisions

Proposition 129 establishes the California Anti-Drug Superfund. The Controller is required to transfer from the General Fund to the Superfund specified amounts annually. (See Table 1.) From the Superfund amounts would be allocated annually to:

-- the Department of Justice for implementation of the CrackDown Task Force Program

-- county sheriffs' and city police departments for law enforcement and crime prevention activities related to the abuse of controlled substances, to provide added protection for schools and neighborhoods, or to match federal funds for similar purposes

-- county boards of supervisors for controlled substance treatment and substance-abuse prevention programs, enhancement of probation supervision of offenders with drug-related problems, prosecution and processing of controlled substance offenders, or to match federal funds for similar purposes.

Amounts of these allocations are shown in Table 1.

The initiative provides that these funds shall not supplant existing funds for substance abuse programs. If the Auditor General reports that supplanting of substance abuse programs has occurred, the Controller shall withhold funds. The Joint Legislative Audit Committee shall evaluate the Superfund program by January 1, 1998.

The Superfund is repealed as of June 30, 1998.

Appropriations limit provisions

The initiative amends Article XIIIB to provide that appropriations from the Superfund are not subject to the Gann limit.

Other provisions

This initiative also

-- makes changes to the Constitution, Code of Civil Procedure, Evidence Code and the Penal Code which

are intended to improve the administration of criminal justice and

-- creates an Emergency Correctional Facility Bond Fund with $306 million for state correctional facilities and $434 million for local penal facilities.

Changes to Proposition 129

Both the appropriations provisions and the tax provisions may be amended with a majority vote, according to Section 67 of the initiative. However, since Article XIIIA requires a two-thirds vote to increase taxes, Section 67 may have limited effect on the tax provisions.

Fiscal effect:

The sponsors of Proposition 129 intended that the revenues raised by conforming to federal tax changes ($1.766 billion from 1990-91 through 1997-98) would be used to fund the Superfund anti-drug program. However, the fiscal effect of the initiative has been substantially affected by recent legislation. The Governor has signed AB 274 (Isenberg) which adopts the same 1987 and 1988 federal tax changes contained in this initiative, as well as tax changes made at the federal level in 1989. AB 274 was effective for tax years beginning on or after January 1, 1990; the initiative changes would not become effective until 1991. (AB 274 contains language which prevents "chaptering out" of the 1990 effective date if the initiative is successful.)

Revenues raised from AB 274 were used to fund the 1990-91 budget. If Proposition 129 is successful, the Legislative Analyst's Office indicates that there will be costs to the General Fund of $1.2 billion to make the required transfers to the Superfund during the four-year period of 1990-91 through 1993-94.

Beginning with the 1994-95 fiscal year, the Controller must transfer to the Superfund what the Franchise Tax Board estimates is "the amount of additional revenues that will be generated in that fiscal year by the act adding this article." The ballot analysis prepared by the Legislative Analyst's Office suggests that the amount could be zero, since current law (AB 274) already contains the provisions in the initiative act. However, it is possible that the courts could interpret this section to mean the amount of ongoing revenues generated by conforming with the 1987 and 1988 federal tax changes.

Table 1

Proposition 129 Expenditures
(dollars in thousands)

	General Fund Transfers to Superfund	Dept. of Justice	Sheriffs/ Police	County Boards
90-91	102,000	-0-	60,000	40,000
91-92	459,000	22,000	120,000	80,000
92-93	407,000	22,880	124,800	83,200
93-94	183,000	23,795	29,792	86,528
94-95	165,000**	24,747	134,984	89,989
95-96	165,000**	25,737	140,383	93,589
96-97	165,000**	26,766	145,998	97,332
97-98	165,000**	27,837	151,838	101,226
	1,811,000**	173,762	1,007,795	671,864

** Beginning in 1994-95, the Controller transfers from the General Fund to the Superfund an amount estimated by the Franchise Tax Board to be generated from the conformity provisions. The Legislative Analyst indicates that this amount could be zero. In this event, the total amount transferred to the Superfund would be $1,151,000.

The Controller is authorized to proportionately reduce the appropriations to the Department of Justice, sheriffs' and police departments, and county boards of supervisors if there are not sufficient funds in the Superfund. It appears that some reductions may be needed, since appropriations total $1,853,421 and transfers to the Superfund -- assuming transfers are made from 1994-95 through 1997-98 -- are estimated to be $1,811,000.

Consultant: Anne Maitland

COMPREHENSIVE CRIME REDUCTION AND DRUG CONTROL ACT OF 1990

October 10, 1989

As Amended November 21, 1989

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INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

12-pt bold-face type

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

(Here set forth the title and summary prepared by the Attorney General. This title and summary must also be printed across the top of each page of the petition whereon signatures are to appear.)

TO THE HONORABLE SECRETARY OF STATE OF CALIFORNIA

12-pt Roman bold-face type

We, the undersigned, registered, qualified voters of California, residents of _____ County (or City and County), hereby propose amendments to the Constitution of California, the Code of Civil Procedure, the Evidence Code, the Government Code, the Penal Code, and the Revenue and Taxation Code relating to crimes, and to make appropriations and authorize the issuance of bonds relating thereto, and petition the Secretary of State to submit the same to the voters of California for their adoption or rejection at the next succeeding general election or at any special statewide election held prior to that general election or otherwise as provided by law. The proposed constitutional and statutory amendments (full title and text of the measure) read as follows:

TITLE I.
PURPOSE

SECTION 1. This act shall be known as the Comprehensive Crime Reduction and Drug Control Act of 1990.

SECTION 2. We, the People of the State of California, find and declare:

(a) As Californians, we have the inalienable right to be free from crime, to be secure in our homes, to be safe on our streets, and to be protected in our schools.

(b) Government has failed to assure our right to be free from crime.

(1) Too few criminals are identified and apprehended.

(2) Those who are apprehended are accorded rights by our courts and by our state Legislature that prevent administration of swift and sure justice, that have unnecessarily expanded the rights of accused criminals far beyond that which is required by the United States Constitution, that have unnecessarily added to the costs of criminal cases, that have diverted the judicial process from its function as a quest for truth, and that have too often ignored the rights of crime victims. Comprehensive reforms are needed in order to restore balance and fairness to our criminal justice system.

(3) Those who are convicted too often evade the full measure of punishment the law was intended to provide because California suffers from an acute shortage of prison capacity, often resulting in prisoners being released before serving their full terms, frequently to return to their criminal enterprises upon release.

(c) Certainty and swiftness of punishment deter crime:

(1) Delays in apprehension and the prospect of evading apprehension altogether diminish the deterrent effect of the criminal law.

(2) Convoluted procedures that obstruct the pursuit of truth have protracted criminal trials, needlessly delaying punishment and impeding deterrence.

(3) Inadequate prison and jail facilities lead to early offender release and the prospect of their evading the full punishment of the law.

(4) The death penalty is a deterrent to murder, but protracted delays in capital trials impede its effectiveness as a deterrent.

(d) Much of our crime problem can be traced to illicit drugs, particularly cocaine and, most recently, crack cocaine. The widespread use of such drugs has conferred vast wealth on the dealers, has contributed to the dramatic expansion of California's street gangs, and has attracted international drug traffickers who increasingly base their smuggling and national distribution in California. The lucrative narcotics trade in turn spawns a wide range of crimes -- ranging from drug-law violations to violent crimes of all kinds. Drugs are California's largest and fastest-growing crime problem. They threaten to overwhelm the entire criminal justice system, from police to courts to prisons. Drug-related crime is a problem of such size and scope that it requires a comprehensive solution.

(e) Increased efforts to prevent children from using drugs, and to treat drug addicts, can reduce the demand for drugs, thereby diminishing the profitability of the drug

trade and the threat of drug-related crime.

(f) The federal government has failed to acknowledge and respond to the acute dangers California faces because of the failure to secure our international borders and the presence here of traffickers, driven from other states by federal law enforcement programs. By failing to allocate the resources it has committed to other states, the federal government has increased the concentration of drug traffickers here.

(g) Increased law-enforcement resources in California applied in a coordinated program of drug-interdiction can reduce the volume of drugs poisoning our society and can increase the apprehension of the traffickers.

(h) Merely increasing the rate of apprehension of criminals would clog already gridlocked courts. Merely increasing the rate of conviction of criminals is of little value without prisons in which to hold them. A coordinated program to improve law-enforcement, the administration of justice, and correctional programs is necessary to deal effectively with the surge in drug-related crime and violent crimes of all kinds.

(i) Additional state revenues are necessary to fund the increased law enforcement, treatment, and crime prevention efforts, which, together with speedier administration of justice and increased prison capacity, can make Californians safer from crime and substance abuse. Revenues sufficient for this purpose can be raised by conforming California corporate tax law to federal law, and thereby closing loopholes in California law.

SECTION 3. The People adopt this act for the following purposes:

(a) To provide a coordinated program that will

(1) improve law enforcement and increase apprehension of criminal offenders,

(2) improve the administration of criminal justice, to assure that those accused of crimes are dealt with fairly and swiftly,

(3) provide the capacity to incarcerate those who commit crimes for the full measure of their punishment;

(b) To reform the law as developed in numerous California Supreme Court decisions and as set forth in the statutes of this state in order to restore balance to our criminal justice system, to create a system in which justice is swift and fair, and to create a system in which violent criminals receive just punishment, in which crime victims and witnesses are treated with care and respect, and in which society as a whole can be free from the fear of crime in our homes, neighborhoods, and schools; and

(c) To provide special programs to deal with those who are responsible for a major share of the crime afflicting us all, those who use and traffic in illicit drugs.

TITLE II.
INCREASED DRUG INTERDICTION AND CRIMINAL APPREHENSION

SECTION 4. Article 7.7 (commencing with Section 16419) is added to Chapter 2 of Part 2 of Division 2 of Title 2 of the Government Code, to read:

Article 7.7. California Anti-Drug Superfund

16419. The California Anti-Drug Superfund is hereby created in the State Treasury. All moneys in the fund shall be invested pursuant to Sections 16470 through 16474, inclusive, of the Government Code.

16419.1. (a) The Controller shall transfer from the General Fund to the California Anti-Drug Superfund an amount equal to one hundred two million dollars ($102,000,000) by January 1, 1991, four hundred fifty-nine million dollars ($459,000,000) by July 15, 1991, four hundred seven million dollars ($407,000,000) by January 1, 1993, and one hundred eighty-three million dollars ($183,000,000) by January 1, 1994.

(b) (1) For each fiscal year commencing on or after July 1, 1994, the Franchise Tax Board shall make an estimate of the amount of additional revenues that will be generated in that fiscal year by the act adding this article. This estimate shall be transmitted to the Controller prior to the commencement of the fiscal year to which it relates.

(2) By July 15, 1994, and by July 15 of each subsequent fiscal year, the Controller shall transfer from the General Fund to the California Anti-Drug Superfund an amount equal to the amount determined under paragraph (1) as additional revenues for that fiscal year.

16419.2. Notwithstanding Section 13340, all money in the California Anti-Drug Superfund is hereby continuously appropriated without regard to fiscal years as follows:

(a) To the Department of Justice to implement the CrackDown Task Force Program specified in Section 15029 of the Government Code, or to match any available federal funds which are to be expended for similar purposes, as follows:

(1) Twenty-two million dollars ($22,000,000) by July 15, 1991.

(2) Twenty-two million eight hundred eighty thousand dollars ($22,880,000) by July 15, 1992.

(3) Twenty-three million seven hundred ninety-five thousand dollars ($23,795,000) by July 15, 1993.

(4) Twenty-four million seven hundred forty-seven thousand dollars ($24,747,000) by July 15, 1994.

(5) Twenty-five million seven hundred thirty-seven thousand dollars ($25,737,000) by July 15, 1995.

(6) Twenty-six million seven hundred sixty-six thousand dollars ($26,766,000) by July 15, 1996.

(7) Twenty-seven million eight hundred thirty-seven thousand dollars ($27,837,000) by July 15, 1997.

(b) To the Controller for allocation to all county sheriffs' departments and city police departments in this state, to be used only for law enforcement and crime prevention activities related to the abuse of controlled substances, to provide added protection for schools and neighborhoods besieged by gangs and drugs, or to match any available federal funds which are to be expended for similar purposes, as determined to be necessary by the sheriffs or chiefs of police of those counties or cities, as follows:

(1) Sixty million dollars ($60,000,000) by January 1, 1991.

(2) One hundred twenty million dollars ($120,000,000) by July 15, 1991.

(3) One hundred twenty-four million eight hundred thousand dollars ($124,800,000) by July 15, 1992.

(4) One hundred twenty-nine million seven hundred ninety-two thousand dollars ($129,792,000) by July 15, 1993.

(5) One hundred thirty-four million nine hundred eighty-four thousand dollars ($134,984,000) by July 15, 1994.

(6) One hundred forty million three hundred eighty-three thousand dollars ($140,383,000) by July 15, 1995.

(7) One hundred forty-five million nine hundred ninety-eight thousand dollars ($145,998,000) by July 15, 1996.

(8) One hundred fifty-one million eight hundred thirty-eight thousand dollars ($151,838,000) by July 15, 1997.

(9) (A) All funds specified in this subdivision (b) shall be distributed to all participating county sheriffs' departments and city police departments based upon the most recent estimates of the population of the departments' service areas, as determined in the manner specified by Section 11005 of the Revenue and Taxation Code. For this purpose, except as specified in subparagraph (B), the estimate of the population of counties shall not include the population of city police department service areas therein.

(B) For a charter city and county, the total annual funds specified in subparagraph (A) which are available to a charter city and county shall be divided equally between the county sheriff's department and the city police department.

(c) To the Controller for allocation to all county boards of supervisors in this state, to be used only for controlled substance treatment and substance-abuse prevention programs (including treatment and substance-abuse prevention in schools), enhancement of probation supervision of offenders with drug-related problems, prosecution and processing of controlled substance offenders, or to match any available federal funds which are to be expended for similar purposes, as determined to be necessary by those county boards of supervisors, as follows:

(1) Forty million dollars ($40,000,000) by January 1, 1991.

(2) Eighty million dollars ($80,000,000) by July 15, 1991.

(3) Eighty-three million, two hundred thousand dollars ($83,200,000) by July 15, 1992.

(4) Eighty-six million, five hundred twenty-eight thousand dollars ($86,528,000) by July 15, 1993.

(5) Eighty-nine million, nine hundred eighty-nine thousand dollars ($89,989,000) by July 15, 1994.

(6) Ninety-three million, five hundred eighty-nine thousand dollars ($93,589,000) by July 15, 1995.

(7) Ninety-seven million, three hundred thirty-two thousand dollars ($97,332,000) by July 15, 1996.

(8) One hundred one million, two hundred twenty-six thousand dollars

($101,226,000) by July 15, 1997.

(9) All funds specified in this subdivision (c) shall be distributed to all participating county boards of supervisors based upon the most recent estimates of the population of the participating counties as determined in the manner specified by Section 11005 of the Revenue and Taxation Code.

(d) To the Controller and the Franchise Tax Board in an amount equal to their costs incurred in connection with their duties under this article as those costs are determined by the Department of Finance.

(e) The funds provided under this article shall not supplant existing funds for substance abuse programs.

16419.3. (a) On January 1, 1992, and on January 1 of each year thereafter, all county sheriff's departments, city police departments, and county boards of supervisors which received funds in the immediately preceding fiscal year under this article shall provide a report to the Auditor General disclosing how those funds were expended.

(b) Based on the reports provided under subdivision (a), and any other relevant information, the Auditor General shall make a determination as to whether the funds received under this article were expended for proper purposes or whether those funds supplanted other funds for substance abuse programs. On or before June 1, 1992, and on or before June 1 of each subsequent year, the Auditor General shall report its findings to the Legislature and the Controller.

(c) Based upon the report submitted under subdivision (b), for years beginning on or after July 1, 1992, the Controller shall, for one year, withhold any funds pursuant to this article from those county sheriffs' departments, city police departments, or county boards of supervisors found in the report to have, in the preceding year, used funds provided under this article to supplant other funds for substance abuse purposes, or otherwise did not use the funds for the purposes of this article.

16419.4. The Joint Legislative Audit Committee shall evaluate the California Anti-Drug Superfund program provided by this article and make a report of that evaluation to the Legislature before January 1, 1998. The report shall include, among other things, the following:

(a) An accounting of how the funds were expended by local law enforcement agencies and county boards of supervisors.

(b) The effect of the program on controlled substance-related arrests, criminal activity, and prosecutions.

(c) The effect of the program on controlled substance abuse and treatment.

16419.5. Should the Controller determine that the funds available in the California Anti-Drug Superfund will not be sufficient to permit a given year's allocations in the amounts provided in Section 16419.2, the Controller shall reduce the allocations to the Department of Justice, county sheriffs' departments, city police departments, and county boards of supervisors by an equal percentage.

16419.6. The Controller may promulgate rules and regulations he or she deems necessary to carry out the provisions of this article.

16419.7. This article shall remain in effect only until June 30, 1998, and as of that

date is repealed. Any funds remaining in the California Anti-Drug Superfund on that date are hereby appropriated to the Controller for allocation to the Department of Justice, county sheriffs' departments, city police departments, and county boards of supervisors in the same proportion as provided in Section 16419.2.

SECTION 5. Section 9.5 is added to Article XIII B of the Constitution, to read:

9.5. "Appropriations subject to limitation" for each entity of government do not include appropriations from the California Anti-Drug Superfund. No adjustment in the appropriation limit of any entity of government shall be required pursuant to Section 3 as a result of revenue being deposited in or appropriated from the California Anti-Drug Superfund.

This section shall remain in effect only until June 30, 1998, and as of that date is repealed.

TITLE III.
CRIMINAL JUSTICE REFORM

SECTION 6. Section 14.1 is added to Article I of the California Constitution, to read:

14.1. If a felony is prosecuted by indictment, there shall be no postindictment preliminary hearing.

SECTION 7. Section 24 of Article I of the California Constitution is amended to read:

24. Rights guaranteed by this Constitution are not dependent on those guaranteed by the United States Constitution.

In criminal cases the rights of a defendant to equal protection of the laws, to due process of law, to the assistance of counsel, to be personally present with counsel, to a speedy and public trial, to compel the attendance of witnesses, to confront the witnesses against him or her, to be free from unreasonable searches and seizures, to privacy insofar as it relates to the admissibility of evidence, to not be compelled to be a witness against himself or herself, to not be placed twice in jeopardy for the same offense, and to not suffer the imposition of cruel or unusual punishment, shall be construed by the courts of this state in a manner consistent with the Constitution of the United States. This Constitution shall not be construed by the courts to afford greater rights to criminal defendants than those afforded by the Constitution of the United States, nor shall it be construed to afford greater rights to minors in juvenile proceedings on criminal causes than those afforded by the Constitution of the United States. Nothing in this section shall be construed to abridge the right to privacy as it affects reproductive choice.

This declaration of rights may not be construed to impair or deny others retained

by the people.

SECTION 8. Section 29 is added to Article I of the California Constitution, to read:

29. In a criminal case, the people of the State of California have the right to due process of law and to a speedy and public trial.

SECTION 9. Section 30 is added to Article I of the California Constitution, to read:

30. (a) This Constitution shall not be construed by the courts to prohibit the joining of criminal cases as prescribed by the Legislature or by the people through the initiative process.

(b) In order to protect victims and witnesses in criminal cases, hearsay evidence shall be admissible at preliminary hearings, as prescribed by the Legislature or by the people through the initiative process.

(c) In order to provide for fair and speedy trials, discovery in criminal cases shall be reciprocal in nature, as prescribed by the Legislature or by the people through the initiative process.

SECTION 10. Section 223 of the Code of Civil Procedure is repealed.

SECTION 11. Section 223 is added to the Code of Civil Procedure, to read:

223. In a criminal case, the court shall conduct the examination of prospective jurors. However, the court may permit the parties, upon a showing of good cause, to supplement the examination by such further inquiry as it deems proper, or shall itself submit to the prospective jurors upon such a showing, such additional questions by the parties as it deems proper. Voir dire of any prospective jurors shall, where practicable, occur in the presence of the other jurors in all criminal cases, including death penalty cases.

Examination of prospective jurors shall be conducted only in aid of the exercise of challenges for cause.

The trial court's exercise of its discretion in the manner in which voir dire is conducted shall not cause any conviction to be reversed unless the exercise of that discretion has resulted in a miscarriage of justice, as specified in Section 13 of Article VI of the California Constitution.

SECTION 12. Section 223.5 of the Code of Civil Procedure is repealed.

SECTION 13. Section 1203.1 is added to the Evidence Code, to read:

1203.1. Section 1203 is not applicable if the hearsay statement is offered at a

preliminary examination, as provided in Section 872 of the Penal Code.

SECTION 14. Section 189 of the Penal Code is amended to read:

189. All murder which is perpetrated by means of a destructive device or explosive, knowing use of ammunition designed primarily to penetrate metal or armor, poison, lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or which is committed in the perpetration of, or attempt to perpetrate, arson, rape, robbery, burglary, mayhem, kidnapping, train wrecking, or any act punishable under Section 286, 288, 288a, or 289, is murder of the first degree; and all other kinds of murders are of the second degree.

As used in this section, "destructive device" shall mean any destructive device as defined in Section 12301, and "explosive" shall mean any explosive as defined in Section 12000 of the Health and Safety Code.

To prove the killing was "deliberate and premeditated," it shall not be necessary to prove the defendant maturely and meaningfully reflected upon the gravity of his or her act.

SECTION 15. Section 190.2 of the Penal Code is amended to read:

190.2. (a) The penalty for a defendant found guilty of murder in the first degree shall be death or confinement in state prison for a term of life without the possibility of parole in any case in which one or more of the following special circumstances has been found under Section 190.4, to be true:

(1) The murder was intentional and carried out for financial gain.

(2) The defendant was previously convicted of murder in the first degree or second degree. For the purpose of this paragraph an offense committed in another jurisdiction which if committed in California would be punishable as first or second degree murder shall be deemed murder in the first or second degree.

(3) The defendant has in this proceeding been convicted of more than one offense of murder in the first or second degree.

(4) The murder was committed by means of a destructive device, bomb, or explosive planted, hidden or concealed in any place, area, dwelling, building or structure, and the defendant knew or reasonably should have known that his or her act or acts would create a great risk of death to a human being or human beings.

(5) The murder was committed for the purpose of avoiding or preventing a lawful arrest or to perfect, or attempt to perfect an escape from lawful custody.

(6) The murder was committed by means of a destructive device, bomb, or explosive that the defendant mailed or delivered, attempted to mail or deliver, or cause to be mailed or delivered and the defendant knew or reasonably should have known that his or her act or acts would create a great risk of death to a human being or human beings.

(7) The victim was a peace officer as defined in Section 830.1, 830.2, 830.3,

830.31, 830.35, 830.36, 830.4, 830.5, 830.5a, 830.6, 830.10, 830.11 or 830.12, who, while engaged in the course of the performance of his or her duties, was intentionally killed, and such defendant knew or reasonably should have known that such victim was a peace officer engaged in the performance of his or her duties; or the victim was a peace officer as defined in the above enumerated sections of the Penal Code, or a former peace officer under any of such sections, and was intentionally killed in retaliation for the performance of his or her official duties.

(8) The victim was a federal law enforcement officer or agent, who, while engaged in the course of the performance of his or her duties, was intentionally killed, and such defendant knew or reasonably should have known that such victim was a federal law enforcement officer or agent, engaged in the performance of his or her duties; or the victim was a federal law enforcement officer or agent, and was intentionally killed in retaliation for the performance of his or her official duties.

(9) The victim was a fireman as defined in Section 245.1, who, while engaged in the course of the performance of his or her duties, was intentionally killed, and such defendant knew or reasonably should have known that such victim was a fireman engaged in the performance of his or her duties.

(10) The victim was a witness to a crime who was intentionally killed for the purpose of preventing his or her testimony in any criminal or juvenile proceeding, and the killing was not committed during the commission, or attempted commission, of the crime to which he or she was a witness; or the victim was a witness to a crime and was intentionally killed in retaliation for his or her testimony in any criminal or juvenile proceeding. As used in this paragraph, "juvenile proceeding" means a proceeding brought pursuant to Section 602 or 707 of the Welfare and Institutions Code.

(11) The victim was a prosecutor or assistant prosecutor or a former prosecutor or assistant prosecutor of any local or state prosecutor's office in this state or any other state, or a federal prosecutor's office and the murder was intentionally carried out in retaliation for or to prevent the performance of the victim's official duties.

(12) The victim was a judge or former judge of any court of record in the local, state or federal system in the State of California or in any other state of the United States and the murder was intentionally carried out in retaliation for or to prevent the performance of the victim's official duties.

(13) The victim was an elected or appointed official or former official of the federal government, a local or state government of California, or of any local or state government of any other state in the United States and the killing was intentionally carried out in retaliation for or to prevent the performance of the victim's official duties.

(14) The murder was especially heinous, atrocious, or cruel, manifesting exceptional depravity. As utilized in this section, the phrase especially heinous, atrocious or cruel manifesting exceptional depravity means a conscienceless, or pitiless crime which is unnecessarily torturous to the victim.

(15) The defendant intentionally killed the victim while lying in wait.

(16) The victim was intentionally killed because of his or her race, color, religion, nationality or country of origin.

(17) The murder was committed while the defendant was engaged in or was an accomplice in the commission of, attempted commission of, or the immediate flight after committing or attempting to commit the following felonies:

(i) Robbery in violation of Section 211 or 212.5.

(ii) Kidnapping in violation of Section 207 or 209.

(iii) Rape in violation of Section 261.

(iv) Sodomy in violation of Section 286.

(v) The performance of a lewd or lascivious act upon person of a child under the age of 14 in violation of Section 288.

(vi) Oral copulation in violation of Section 288a.

(vii) Burglary in the first or second degree in violation of Section 460.

(viii) Arson in violation of subdivision (b) of Section 451.

(ix) Train wrecking in violation of Section 219.

(x) Mayhem in violation of Section 203.

(xi) Rape by instrument in violation of Section 289.

(18) The murder was intentional and involved the infliction of torture.

(19) The defendant intentionally killed the victim by the administration of poison.

(b) Unless an intent to kill is specifically required under subdivision (a) for a special circumstance enumerated therein, an actual killer as to whom such special circumstance has been found to be true under Section 190.4 need not have had any intent to kill at the time of the commission of the offense which is the basis of the special circumstance in order to suffer death or confinement in state prison for a term of life without the possibility of parole.

(c) Every person not the actual killer who, with the intent to kill, aids, abets, counsels, commands, induces, solicits, requests, or assists any actor in the commission of murder in the first degree shall suffer death or confinement in state prison for a term of life without the possibility of parole, in any case in which one or more of the special circumstances enumerated in subdivision (a) of this section has been found to be true under Section 190.4.

(d) Notwithstanding subdivision (c), every person not the actual killer, who, with reckless indifference to human life and as a major participant, aids, abets, counsels, commands, induces, solicits, requests, or assists in the commission of a felony enumerated in paragraph (17) of subdivision (a), which felony results in the death of some person or persons, who is found guilty of murder in the first degree therefor, shall suffer death or confinement in state prison for life without the possibility of parole, in any case in which a special circumstance enumerated in paragraph (17) of subdivision (a) of this section has been found to be true under Section 190.4.

(e) The penalty shall be determined as provided in Sections 190.1, 190.2, 190.3, 190.4, and 190.5.

SECTION 16. Section 190.41 is added to the Penal Code, to read:

190.41. Notwithstanding Section 190.4 or any other provision of law, the corpus

delicti of a felony-based special circumstance enumerated in paragraph (17) of subdivision (a) of Section 190.2 need not be proved independently of a defendant's extrajudicial statement.

SECTION 17. Section 190.5 of the Penal Code is amended to read:

190.5. (a) Notwithstanding any other provision of law, the death penalty shall not be imposed upon any person who is under the age of 18 at the time of the commission of the crime. The burden of proof as to the age of such person shall be upon the defendant.

(b) The penalty for a defendant found guilty of murder in the first degree, in any case in which one or more special circumstances enumerated in Section 190.2 or 190.25 has been found to be true under Section 190.4, who was 16 years of age or older and under the age of 18 years at the time of the commission of the crime, shall be confinement in the state prison for life without the possibility of parole or at the discretion of the court, 25 years to life.

(c) The trier of fact shall determine the existence of any special circumstance pursuant to the procedure set forth in Section 190.4.

SECTION 18. Section 206 is added to the Penal Code, to read:

206. Every person who, with the intent to cause cruel or extreme pain and suffering for the purpose of revenge, extortion, persuasion, or for any sadistic purpose, inflicts great bodily injury as defined in Section 12022.7 upon the person of another, is guilty of torture.

The crime of torture does not require any proof that the victim suffered pain.

SECTION 19. Section 206.1 is added to Penal Code, to read:

206.1. Torture is punishable by imprisonment in the state prison for a term of life.

SECTION 20. Section 859 of the Penal Code is amended to read:

859. When the defendant is charged with the commission of a public offense over which the superior court has original jurisdiction, by a written complaint subscribed under oath and on file in a court within the county in which the public offense is triable, he or she shall, without unnecessary delay, be taken before a magistrate of the court in which the complaint is on file. The magistrate shall immediately deliver to the defendant a copy of the complaint, inform the defendant that he or she has the right to have the assistance of counsel, ask the defendant if he or she desires the assistance of counsel, and allow the defendant reasonable time to send for counsel. However, in a capital case, the court shall inform the defendant that the defendant must be represented in court by counsel at all stages of the preliminary and trial proceedings and that the representation will be at

the defendant's expense if the defendant is able to employ counsel or at public expense if he or she is unable to employ counsel, inquire of him or her whether he or she is able to employ counsel and, if so, whether the defendant desires to employ counsel of the defendant's choice or to have counsel assigned for him or her, and allow the defendant a reasonable time to send for his or her chosen or assigned counsel. The magistrate must, upon the request of the defendant, require a peace officer to take a message to any counsel whom the defendant may name, in the judicial district in which the court is situated. The officer shall, without delay and without a fee, perform that duty. If the defendant desires and is unable to employ counsel, the court shall assign counsel to defend him or her; in a capital case, if the defendant is able to employ counsel and either refuses to employ counsel or appears without counsel after having had a reasonable time to employ counsel, the court shall assign counsel to defend him or her. If it appears that the defendant may be a minor, the magistrate shall ascertain whether that is the case, and if the magistrate concludes that it is probable that the defendant is a minor, he or she shall immediately either notify the parent or guardian of the minor, by telephone or messenger, of the arrest, or appoint counsel to represent the minor.

SECTION 21. Section 866 of the Penal Code is amended to read:

866. (a) When the examination of witnesses on the part of the people is closed, any witness the defendant may produce shall be sworn and examined.

Upon the request of the prosecuting attorney, the magistrate shall require an offer of proof from the defense as to the testimony expected from the witness. The magistrate shall not permit the testimony of any defense witness unless the offer of proof discloses to the satisfaction of the magistrate, in his or her sound discretion, that the testimony of that witness, if believed, would be reasonably likely to establish an affirmative defense, negate an element of a crime charged, or impeach the testimony of a prosecution witness or the statement of a declarant testified to by a prosecution witness.

(b) It is the purpose of a preliminary examination to establish whether there exists probable cause to believe that the defendant has committed a felony. The examination shall not be used for purposes of discovery.

(c) This section shall not be construed to compel or authorize the taking of depositions of witnesses.

SECTION 22. Section 871.6 is added to the Penal Code, to read:

871.6. If in a felony case the magistrate sets the preliminary examination beyond the time specified in Section 859b, in violation of Section 859b, or continues the preliminary hearing without good cause and good cause is required by law for such a continuance, the people or the defendant may file a petition for writ of mandate or prohibition in the superior court seeking immediate appellate review of the ruling setting the hearing or granting the continuance. Such a petition shall have precedence over all other cases in the court to which the petition is assigned. If the superior court grants a

peremptory writ, it shall issue the writ and a remittitur three court days after its decision becomes final as to the court if this action is necessary to prevent mootness or to prevent frustration of the relief granted, notwithstanding the rights of the parties to seek review in a court of appeal. When the superior court issues the writ and remittitur as provided in this section, the writ shall command the magistrate to proceed with the preliminary hearing without further delay, other than that reasonably necessary for the parties to obtain the attendance of their witnesses.

The court of appeal may stay or recall the issuance of the writ and remittitur. The failure of the court of appeal to stay or recall the issuance of the writ and remittitur shall not deprive the parties of any right they would otherwise have to appellate review or extraordinary relief.

SECTION 23. Section 872 of the Penal Code is amended to read:

872. (a) If, however, it appears from the examination that a public offense has been committed, and there is sufficient cause to believe that the defendant is guilty, the magistrate shall make or indorse on the complaint an order, signed by him or her, to the following effect: "It appearing to me that the offense in the within complaint mentioned (or any offense, according to the fact, stating generally the nature thereof), has been committed, and that there is sufficient cause to believe that the within named A.B. is guilty, I order that he or she be held to answer to the same."

(b) Notwithstanding Section 1200 of the Evidence Code, the finding of probable cause may be based in whole or in part upon the sworn testimony of a law enforcement officer relating the statements of declarants made out of court offered for the truth of the matter asserted. Any law enforcement officer testifying as to hearsay statements shall either have five years of law enforcement experience or have completed a training course certified by the Commission on Peace Officer Standards and Training which includes training in the investigation and reporting of cases and testifying at preliminary hearings.

SECTION 24. Section 954.1 is added to the Penal Code, to read:

954.1. In cases in which two or more different offenses of the same class of crimes or offenses have been charged together in the same accusatory pleading, or where two or more accusatory pleadings charging offenses of the same class of crimes or offenses have been consolidated, evidence concerning one offense or offenses need not be admissible as to the other offense or offenses before the jointly charged offenses may be tried together before the same trier of fact.

SECTION 25. Section 987.05 is added to the Penal Code, to read:

987.05. In assigning defense counsel in felony cases, whether it be the public defender or private counsel, the court shall only assign counsel who represents, on the record, that he or she will be ready to proceed with the preliminary hearing or trial, as

the case may be, within the time provisions prescribed in this code for preliminary hearings and trials, except in those unusual cases where the court finds that, due to the nature of the case, counsel cannot reasonably be expected to be ready within the prescribed period if he or she were to begin preparing the case forthwith and continue to make diligent and constant efforts to be ready. In the case where the time of preparation for preliminary hearing or trial is deemed greater than the statutory time, the court shall set a reasonable time period for preparation. In making this determination, the court shall not consider counsel's convenience, counsel's calendar conflicts, or counsel's other business. The court may allow counsel a reasonable time to become familiar with the case in order to determine whether he or she can be ready. In cases where counsel, after making representations that he or she will be ready for preliminary examination or trial, and without good cause is not ready on the date set, the court may relieve counsel from the case and may impose sanctions upon counsel, including, but not limited to, finding the assigned counsel in contempt of court, imposing a fine, or denying any public funds as compensation for counsel's services. Both the prosecuting attorney and defense counsel shall have a right to present evidence and argument as to a reasonable length of time for preparation and on any reasons why counsel could not be prepared in the set time.

SECTION 26. Section 1049.5 is added to the Penal Code, to read:

1049.5. In felony cases, the court shall set a date for trial which is within 60 days of the defendant's arraignment in the superior court unless, upon a showing of good cause as prescribed in Section 1050, the court lengthens the time. If the court, after a hearing as prescribed in Section 1050, finds that there is good cause to set the date for trial beyond the 60 days, it shall state on the record the facts proved that justify its finding. A statement of facts proved shall be entered in the minutes.

SECTION 27. Section 1050.1 is added to the Penal Code, to read:

1050.1. In any case in which two or more defendants are jointly charged in the same complaint, indictment, or information, and the court or magistrate, for good cause shown, continues the arraignment, preliminary hearing, or trial of one or more defendants, the continuance shall, upon motion of the prosecuting attorney, constitute good cause to continue the remaining defendants' cases so as to maintain joinder. The court or magistrate shall not cause jointly charged cases to be severed due to the unavailability or unpreparedness of one or more defendants unless it appears to the court or magistrate that it will be impossible for all defendants to be available and prepared within a reasonable period of time.

SECTION 28. Chapter 10 (commencing with Section 1054) is added to Title 6 of Part 2 of the Penal Code, to read:

CHAPTER 10. DISCOVERY

1054. This chapter shall be interpreted to give effect to all of the following purposes:

(a) To promote the ascertainment of truth in trials by requiring timely pretrial discovery.

(b) To save court time by requiring that discovery be conducted informally between and among the parties before judicial enforcement is requested.

(c) To save court time in trial and avoid the necessity for frequent interruptions and postponements.

(d) To protect victims and witnesses from danger, harassment, and undue delay of the proceedings.

(e) To provide that no discovery shall occur in criminal cases except as provided by this chapter, other express statutory provisions, or as mandated by the Constitution of the United States.

1054.1. The prosecuting attorney shall disclose to the defendant or his or her attorney all of the following materials and information, if it is in the possession of the prosecuting attorney or if the prosecuting attorney knows it to be in the possession of the investigating agencies:

(a) The names and addresses of persons the prosecutor intends to call as witnesses at trial.

(b) Statements of all defendants.

(c) All relevant real evidence seized or obtained as a part of the investigation of the offenses charged.

(d) The existence of a felony conviction of any material witness whose credibility is likely to be critical to the outcome of the trial.

(e) Any exculpatory evidence.

(f) Relevant written or recorded statements of witnesses or reports of the statements of witnesses whom the prosecutor intends to call at the trial, including any reports or statements of experts made in conjunction with the case, including the results of physical or mental examinations, scientific tests, experiments, or comparisons which the prosecutor intends to offer in evidence at the trial.

1054.2. No attorney may disclose or permit to be disclosed to a defendant the address or telephone number of a victim or witness whose name is disclosed to the attorney pursuant to subdivision (a) of Section 1054.1 unless specifically permitted to do so by the court after a hearing and a showing of good cause.

1054.3. The defendant and his or her attorney shall disclose to the prosecuting attorney:

(a) The names and addresses of persons, other than the defendant, he or she intends to call as witnesses at trial, together with any relevant written or recorded statements of those persons, or, reports of the statements of those persons, including any reports or statements of experts made in connection with the case, including the results of physical or mental examinations, scientific tests, experiments, or comparisons which the defendant intends to offer in evidence at the trial.

(b) Any real evidence which the defendant intends to offer in evidence at the trial.

1054.4. Nothing in this chapter shall be construed as limiting any law enforcement or prosecuting agency from obtaining nontestimonial evidence to the extent permitted by law on the operative date of this section.

1054.5. (a) No order requiring discovery shall be made in criminal cases except as provided in this chapter. This chapter shall be the only means by which the defendant may compel the disclosure or production of information from prosecuting attorneys, law enforcement agencies which investigated or prepared the case against the defendant, or any other persons or agencies which the prosecuting attorney or investigating agency may have employed to assist them in performing their duties.

(b) Before a party may seek court enforcement of any of the disclosures required by this chapter, the party shall make an informal request of opposing counsel for the desired materials and information. If within 15 days, the opposing counsel fails to provide the materials and information requested, the party may seek a court order. Upon a showing that a party has not complied with Section 1054.1 or 1054.3 and upon a showing that the moving party complied with the informal discovery procedure provided in this subdivision, a court may make any order necessary to enforce the provisions of this chapter, including, but not limited to, immediate disclosure, contempt proceedings, delaying or prohibiting the testimony of a witness or the presentation of real evidence, continuance of the matter, or any other lawful order. Further, the court may advise the jury of any failure or refusal to disclose and of any untimely disclosure.

(c) The court may prohibit the testimony of a witness pursuant to subdivision (b) only if all other sanctions have been exhausted. The court shall not dismiss a charge pursuant to subdivision (b) unless required to do so by the Constitution of the United States.

1054.6. Neither the defendant nor the prosecuting attorney is required to disclose any materials or information which are work product as defined in subdivision (c) of Section 2018 of the Code of Civil Procedure, or which are privileged pursuant to an express statutory provision, or are privileged as provided by the Constitution of the United States.

1054.7. The disclosures required under this chapter shall be made at least 30 days prior to the trial, unless good cause is shown why a disclosure should be denied, restricted, or deferred. If the material and information becomes known to, or comes into the possession of, a party within 30 days of trial, disclosure shall be made immediately, unless good cause is shown why a disclosure should be denied, restricted, or deferred. "Good cause" is limited to threats or possible danger to the safety of a victim or witness, possible loss or destruction of evidence, or possible compromise of other investigations by law enforcement.

Upon the request of any party, the court may permit a showing of good cause for the denial or regulation of disclosures, or any portion of that showing, to be made in camera. A verbatim record shall be made of any such proceeding. If the court enters an order granting relief following a showing in camera, the entire record of the showing shall

be sealed and preserved in the records of the court, and shall be made available to an appellate court in the event of an appeal or writ. In its discretion, the trial court may after trial and conviction, unseal any previously sealed matter.

SECTION 29. Section 1102.5 of the Penal Code is repealed.

SECTION 30. Section 1102.7 of the Penal Code is repealed.

SECTION 31. Section 1385.1 is added to the Penal Code, to read:

1385.1. Notwithstanding Section 1385 or any other provision of law, a judge shall not strike or dismiss any special circumstance which is admitted by a plea of guilty or nolo contendere or is found by a jury or court as provided in Sections 190.1 to 190.5, inclusive.

SECTION 32. Section 1430 of the Penal Code is repealed.

SECTION 33. Section 1511 is added to the Penal Code, to read:

1511. If in a felony case the superior court sets the trial beyond the period of time specified in Section 1049.5, in violation of Section 1049.5, or continues the hearing of any matter without good cause, and good cause is required by law for such a continuance, either party may file a petition for writ of mandate or prohibition in the court of appeal seeking immediate appellate review of the ruling setting the trial or granting the continuance. Such a petition shall have precedence over all other cases in the court to which the petition is assigned, including, but not limited to, cases that originated in the juvenile court. If the court of appeal grants a peremptory writ, it shall issue the writ and a remittitur three court days after its decision becomes final as to that court if such action is necessary to prevent mootness or to prevent frustration of the relief granted, notwithstanding the right of the parties to file a petition for review in the Supreme Court. When the court of appeal issues the writ and remittitur as provided herein, the writ shall command the superior court to proceed with the criminal case without further delay, other than that reasonably necessary for the parties to obtain the attendance of their witnesses.

The Supreme Court may stay or recall the issuance of the writ and remittitur. The Supreme Court's failure to stay or recall the issuance of the writ and remittitur shall not deprive the respondent or the real party in interest of its right to file a petition for review in the Supreme Court.

TITLE IV.
EMERGENCY CORRECTIONAL FACILITIES

SECTION 34. Chapter 17 (commencing with Section 7450) is added to Title 7 of

Part 3 of the Penal Code, to read:

Article 1. General Provisions

7450. As used in this chapter, the following terms have the following meanings:

(a) "Committee" means the Emergency Correctional Facility Finance Committee created pursuant to Section 7462.

(b) "Fund" means the Emergency Correctional Facility Bond Fund created pursuant to Section 7455.

(c) The primary purpose of the facilities authorized by this title shall be to house inmates with drug abuse problems in order to provide them with (1) a drug-free environment, and (2) drug treatment programs which shall also be integrated with parole and probation supervision programs.

(d) Cost efficiency of construction and operation and effectiveness of treatment shall be of paramount concern. Facilities authorized by this section shall be constructed within the limits of the appropriation except as authorized by the Joint Prison Construction and Operations Committee of the Legislature. The facilities shall be designed and constructed using an efficient and effective low-cost design.

Article 2. Emergency Correctional Facilities

7455. The proceeds of bonds issued and sold pursuant to this chapter shall be deposited in the Emergency Correctional Facility Bond Fund, which is hereby created.

7456. (a) Money in the fund, up to a limit of three hundred six million dollars ($306,000,000) may be available for the acquisition and construction of state correctional facilities. For that purpose, acquisition includes the purchase of property, the lease of property for a period of not less than 20 years, and any other acquisition of property that grants a right to occupy the property for at least 20 years, and construction includes the remodeling of existing facilities.

(b) Money in the fund, up to a limit of four hundred thirty-four million dollars ($434,000,000) shall be available for the acquisition and construction of local and regional confinement and treatment facilities for the housing of prisoners who might otherwise be housed in county jails.

Article 3. Fiscal Provisions

7460. Bonds in the total amount of seven hundred forty million dollars ($740,000,000), or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this chapter and to be used to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds shall, when sold, be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both principal of, and interest

on, the bonds as the principal and interest become due and payable.

7461. The bonds authorized by this chapter shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), and all of the provisions of that law apply to the bonds and to this chapter and are hereby incorporated in this chapter as though set forth in full in this chapter.

7462. (a) Solely for the purpose of authorizing the issuance and sale, pursuant to the State General Obligation Bond Law, of the bonds authorized by this chapter, the Emergency Correctional Facility Finance Committee is hereby created. For purposes of this chapter, the Emergency Correctional Facility Finance Committee is "the committee" as that term is used in the State General Obligation Bond Law. The committee consists of the Controller, the Treasurer, the Director of Finance, the Director of Corrections, and the Chairperson of the Board of Corrections, or their designated representatives. A majority of the committee may act for the committee.

(b) For purposes of the State General Obligation Bond Law, the Department of Corrections is designated the "board."

7463. The committee shall determine whether it is necessary or desirable to issue bonds authorized pursuant to this chapter in order to carry out the actions specified in Section 7456 and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

7464. There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds each year, and it is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act which is necessary to collect that additional sum.

7465. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this chapter, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this chapter, as the principal and interest become due and payable.

(b) The sum which is necessary to carry out the provisions of Section 7466, appropriated without regard to fiscal years.

7466. For the purposes of carrying out this chapter, the Director of Finance may authorize the withdrawal from the General Fund of an amount or amounts not to exceed the amount of the unsold bonds which have been authorized by the committee to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the fund. Any money made available under this section shall be returned to the General Fund from money received from the sale of bonds for the purpose of carrying out this chapter.

7467. All money deposited in the fund which is derived from premium and accrued

interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

7468. The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code.

7469. The People hereby find and declare that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

SECTION 35. (a) The Department of Corrections is hereby authorized to construct and establish confinement and treatment facilities totalling 8,000 beds, together with necessary service facilities.

(b) The facilities authorized by this section shall be used for the confinement and treatment of inmates committed to the Department of Corrections.

(c) Preference for construction shall be given to a site on federal property in the Mojave Desert.

(d) The department may acquire property for the purposes of this section by purchase, by lease with a term of at least 20 years, or by any similar arrangement that provides the department with the right to occupy the property for at least 20 years. Construction may include the adaptation of existing facilities.

(e) Any contract or subcontract for the construction of facilities authorized by this section shall provide for payment of wages to all workers no less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed, and no less than the general prevailing rate of per diem wages for holiday and overtime work.

SECTION 36. (a) The Department of Corrections is authorized to construct and establish confinement and treatment facilities to house prisoners who might otherwise be housed in county jails. These facilities shall be operated by counties, as authorized by law. Counties may contract with the Department of Corrections to operate all or any portion of these facilities.

(b) Facilities with a total capacity of 6,000 beds shall be located in southern California. For that purpose, "southern California" means the Counties of Santa Barbara, Kern, and San Bernardino, and the more southerly counties.

(c) Other facilities, having a capacity of 4,000 beds, shall be located in northern California in the vicinity of the counties bordering the San Francisco Bay.

(d) Sections 6029 and 6030 of the Penal Code shall not apply to facilities constructed under this section.

(e) Any contract or subcontract for the construction of facilities authorized by this section shall provide for payment of wages to all workers no less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed, and no less than the general prevailing rate of per diem wages for holiday and overtime work.

SECTION 37. The sum of seven hundred forty million dollars ($740,000,000) is hereby appropriated from the Emergency Correctional Facility Bond Fund for use as follows:

(a) The sum of three hundred six million dollars ($306,000,000) is appropriated to the Department of Corrections for the facilities authorized by Section 35.

(b) (1) The sum of two hundred sixty-four million dollars ($264,000,000) is appropriated to the Department of Corrections for the joint use jail facilities in southern California authorized by Section 36.

(2) The sum of one hundred seventy million dollars ($170,000,000) is appropriated to the Department of Corrections for the joint use jail facilities in northern California authorized by Section 36.

(c) Funds appropriated by this section shall be available for purposes, as necessary, of site acquisition, site studies and suitability reports, environmental studies master planning, architectural programming, schematics, preliminary plans, working drawings, construction, and long-lead and equipment items. For that purpose, site acquisition includes the payment for the right to occupy the property for at least 20 years.

TITLE V.
FUNDING

SECTION 38. Section 17008.5 is added to the Revenue and Taxation Code, to read:

17008.5. (a) The provisions of Section 7704 of the Internal Revenue Code, relating to certain publicly traded partnerships treated as corporations, shall apply to taxable years beginning on or after January 1, 1991, except that Section 10211(c)(2) of Public Law 100-203 shall apply.

(b) The amendments to Section 7704 of the Internal Revenue Code made by Section 2004 of Public Law 100-647, relating to certain publicly traded partnerships treated as corporations, shall apply to taxable years beginning on or after January 1, 1991.

SECTION 39. Section 17062 of the Revenue and Taxation Code is amended to read:

17062. (a) In addition to the other taxes imposed by this part, there is hereby imposed for each taxable year, a tax equal to the excess, if any, of

(1) The tentative minimum tax for the taxable year, over

(2) The regular tax for the taxable year.

(b) For purposes of this chapter, each of the following shall apply:

(1) The tentative minimum tax shall be computed in accordance with Sections 55 to 59, inclusive, of the Internal Revenue Code, except as otherwise provided in this part.

(2) The regular tax shall be the amount of tax imposed by Section 17041 or

17048, reduced by credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(3) (A) The provisions of Section 55(b)(1) of the Internal Revenue Code shall be modified to provide that the tentative minimum tax for the taxable year shall be equal to 7 percent of so much of the alternative minimum taxable income for the taxable year as exceeds the exemption amount, reduced by the alternative credit for taxes paid to other states as allowed by Chapter 12 (commencing with Section 18001).

(B) In the case of a nonresident or part-year resident, the tentative minimum tax shall be computed as if the nonresident or part-year resident were a resident for the entire year multiplied by the ratio of California adjusted gross income (as modified for purposes of this chapter) to total adjusted gross income from all sources (as modified for purposes of this chapter). For purposes of computing the tax under subparagraph (A) and gross income from all sources, the net operating loss deduction provided in Section 56(d) of the Internal Revenue Code shall be computed as if the taxpayer were a resident for all prior years.

(C) For purposes of this section, the term "California adjusted gross income" includes each of the following:

(i) For any period during which the taxpayer was a resident of this state (as defined by Section 17014), all items of adjusted gross income (as modified for purposes of this chapter), regardless of source.

(ii) For any period during which the taxpayer was not a resident of this state, only those items of adjusted gross income (as modified for purposes of this chapter) which were derived from sources within this state, determined in accordance with Chapter 11 (commencing with Section 17951).

(4) (A) If there was a deferral of preference tax under former Section 17064.8 for any taxable year beginning before January 1, 1987, and the amount of the deferred tax has not been paid for any taxable year beginning before January 1, 1987, the amount of the net operating loss carryovers which may be carried to taxable years beginning after December 31, 1986, for purposes of this chapter, shall be reduced by the amount of the tax preferences attributable to the deferred tax which has not been paid.

(B) In the case of a net operating loss allowed to be carried forward under subdivision (d) of Section 17276, subparagraph (A) shall apply to the extent that such a loss would have resulted in a deferred tax under prior law.

(5) The provisions of Section 57(a)(5) of the Internal Revenue Code, relating to tax-exempt interest shall not be applicable.

(6) The provisions of Section 59(a) of the Internal Revenue Code, relating to the alternative minimum tax foreign tax credit, shall not be applicable.

(7) Section 56(b)(1)(E) of the Internal Revenue Code, relating to standard deduction and deduction for personal exemptions not allowed, is modified, for purposes of this part, to deny the standard deduction allowed by Section 17073.5.

SECTION 40. Section 17094 of the Revenue and Taxation Code is repealed.

SECTION 41. Section 17279 of the Revenue and Taxation Code is repealed.

SECTION 42. Section 17560 of the Revenue and Taxation Code is amended to read:

17560. (a) At the election of the taxpayer, the provisions of Section 453C of the Internal Revenue Code, relating to certain indebtedness treated as payment on installment obligations, shall not be applicable.

(b) (1) If an election is not made under subdivision (a), then for purposes of applying the provisions of Section 453C of the Internal Revenue Code, relating to certain indebtedness treated as a payment on installment obligations, the provisions of Sections 811(c)(2), 811(c)(4), 811(c)(6), and 811(c)(7) of Public Law 99-514, as modified by Section 1008(f) of Public Law 100-647, shall apply.

(2) The provisions of Section 812 of Public Law 99-514, relating to the disallowance of use of installment method for certain obligations as modified by Section 1008(g) of Public Law 100-647, shall apply to taxable years beginning on or after January 1, 1987.

(c) The repeal of Section 453C of the Internal Revenue Code by Section 10202(a) of Public Law 100-203, relating to repeal of the proportionate disallowance of the installment method, shall apply to dispositions in taxable years beginning on or after January 1, 1991.

(d) (1) The amendments to Section 453 of the Internal Revenue Code by Section 2004 of Public Law 100-647, relating to the installment method, shall apply to taxable years beginning on or after January 1, 1991.

(2) In the case of any installment obligation to which Section 453(l)(2)(B) of the Internal Revenue Code applies, in lieu of the provisions of Section 453(l)(3)(A) of the Internal Revenue Code, the tax imposed under Section 17041 or 17048 for any taxable year for which payment is received on that obligation shall be increased by the amount of interest determined in the manner provided under Section 453(l)(3)(B) of the Internal Revenue Code.

(3) The provisions of Section 10202(e)(2) and 10204(b)(2)(B) of Public Law 100-203, relating to change in method of accounting, are modified to provide that any adjustments required by Section 481 of the Internal Revenue Code shall be included in gross income as follows:

(A) Fifty percent in the first taxable year beginning on or after January 1, 1991.

(B) Fifty percent in the second taxable year beginning on or after January 1, 1991.

(e) (1) The amendments to Section 453A of the Internal Revenue Code made by Section 2004 of Public Law 100-647, relating to special rules for nondealers, shall apply to taxable years beginning on or after January 1, 1991.

(2) In the case of any installment obligation to which Section 453A of the Internal Revenue Code applies and which is outstanding as of the close of the taxable year, in lieu of the provisions of Section 453A(c)(1) of the Internal Revenue Code, the tax imposed under Section 17041 or 17048 for the taxable year shall be increased by the amount of

interest determined in the manner provided under Section 453A(c)(2) of the Internal Revenue Code.

(3) The provisions of Section 453A(c)(3)(B) of the Internal Revenue Code, relating to the maximum rate used in calculating the deferred tax liability, are modified to refer to the maximum rate of tax imposed under Section 17041 in lieu of the maximum rate of tax imposed under Section 1 or 11 of the Internal Revenue Code.

SECTION 43. Section 17561 of the Revenue and Taxation Code is amended to read:

17561. (a) For purposes of this part, the provisions of Section 469(d)(2) of the Internal Revenue Code, relating to passive activity credits, are modified to refer to the following credits:

(1) The credit for research expenses allowed by Section 17052.12.

(2) The credit for certain wages paid (targeted jobs) allowed by Section 17053.7.

(3) The credit for clinical testing expenses allowed by Section 17057.

(4) The credit for low-income housing allowed by Section 17058.

(b) For purposes of applying the provisions of Section 469(i) of the Internal Revenue Code, relating to the twenty-five thousand dollars ($25,000) offset for rental real estate activities:

(1) The dollar limitation for the credit allowed under Section 17058 (relating to low-income housing) shall be equal to seventy-five thousand dollars ($75,000) in lieu of the amount specified in Section 469(i)(2) of the Internal Revenue Code.

(2) The term "adjusted gross income," as defined in Section 469(i)(3)(D), shall mean the amount required to be shown as adjusted gross income on the federal tax return for the same taxable year determined without regard to –

(A) Any amount includible in gross income on the federal tax return under Section 86 of the Internal Revenue Code.

(B) Any amount allowed as a deduction on the federal tax return under Section 219 of the Internal Revenue Code.

(C) Any passive activity loss.

(c) Section 502 of the Tax Reform Act of 1986 (Public Law 99-514) shall apply.

(d) For taxable years beginning on or after January 1, 1987, the provisions of Section 10212 of Public Law 100-203, relating to treatment of publicly traded partnerships under Section 469 of the Internal Revenue Code, shall be applicable.

(e) The amendments to Section 469(k) of the Internal Revenue Code made by Section 2004 of Public Law 100-647, relating to separate application of Section 469 in case of publicly traded partnerships, shall apply to taxable years beginning on or after January 1, 1991.

SECTION 44. Section 17563 of the Revenue and Taxation Code is amended to read:

17563. (a) In the case of any taxpayer who elected to have Section 463 of the Internal Revenue Code of 1986 apply for that taxpayer's last taxable year beginning prior to January 1, 1991, and who is required to change his or her method of accounting by reason of the amendments made by the act adding this provision, each of the following shall apply:

(1) The change shall be treated as initiated by the taxpayer.

(2) The change shall be treated as having been made with the consent of the Franchise Tax Board.

(3) The net amount of adjustments required by Chapter 6 (commencing with Section 17551) to be taken into account by the taxpayer:

(A) Shall be reduced by the balance in the suspense account, under Section 463(c) of the Internal Revenue Code as of the close of the last taxable year beginning before January 1, 1991, and

(B) Shall be taken into account over the two taxable year period beginning with the taxable year following that last taxable year, as follows:

In the case of the:	The percentage to be taken into account is:
1st Year	50
2nd Year	50

(b) Notwithstanding subparagraph (B) of paragraph (3) of subdivision (a), if the period during which the adjustments are required to be taken into account under Chapter 6 (commencing with Section 17551) is less than two years, those adjustments shall be taken into account ratably over the shorter period.

SECTION 45. Section 17564 of the Revenue and Taxation Code is amended to read:

17564. (a) Long-term contracts shall be accounted for in accordance with the special rules set forth in Section 460 of the Internal Revenue Code.

(b) (1) The provisions of Section 804(d) of Public Law 99-514, relating to the effective date of modifications in the method of accounting for long-term contracts, shall be applicable to taxable years beginning on or after January 1, 1987.

(2) In the case of a contract entered into after February 28, 1986, during a taxable year beginning before January 1, 1987, an adjustment to income shall be made upon completion of the contract, if necessary, to correct any underreporting or overreporting of income, for purposes of this part, resulting from differences between state and federal law for the taxable year in which the contract began.

(c) In the case of a contract entered into after October 13, 1987, during a taxable year beginning before January 1, 1991, an adjustment to income shall be made upon completion of the contract, if necessary, to correct any underreporting or overreporting of income, for purposes of this part, resulting from differences between state and federal law for taxable years beginning prior to January 1, 1991.

(d) In the case of a contract entered into after June 20, 1988, during a taxable

year beginning before January 1, 1991, an adjustment to income shall be made upon completion of the contract, if necessary, to correct any underreporting or overreporting of income, for purposes of this part, resulting from differences between state and federal law for taxable years beginning prior to January 1, 1991.

(e) For purposes of applying Section 460(a)(2) of the Internal Revenue Code, relating to 90 percent look-back method, any adjustment to income computed under subdivision (b), (c), or (d) shall be deemed to have been reported in the taxable year from which the adjustment arose, rather than the taxable year in which the contract was completed.

SECTION 46. Section 23038.5 is added to the Revenue and Taxation Code, to read:

23038.5. (a) The provisions of Section 7704 of the Internal Revenue Code, relating to certain publicly traded partnerships treated as corporations, shall apply to income years beginning on or after January 1, 1991, except that Section 10211(c)(2) of Public Law 100-203 shall apply.

(b) The amendments to Section 7704 of the Internal Revenue Code made by Section 2004 of Public Law 100-647, relating to certain publicly traded partnerships treated as corporations, shall apply to income years beginning on or after January 1, 1991.

SECTION 47. Section 23456 of the Revenue and Taxation Code is amended to read:

23456. For purposes of this part, Section 56 of the Internal Revenue Code is modified as follows:

(a) (1) Section 56(a)(2) of the Internal Revenue Code, relating to mining exploration and development costs, shall apply only to expenses incurred during income years beginning on or after January 1, 1988.

(2) Section 56(a)(5) of the Internal Revenue Code, relating to pollution control facilities, shall apply only to amounts allowable as a deduction under Section 24372.3.

(b) Section 56(c)(2) of the Internal Revenue Code, relating to Merchant Marine Capital Construction Funds, shall not be applicable.

(c) (1) For purposes of applying Section 56(d) of the Internal Revenue Code, all references to "December 31, 1986," are modified to read "December 31, 1987," and all references to "January 1, 1987," are modified to read "January 1, 1988."

(2) (A) If there was a deferral of preference tax under former Section 23405 for any income year beginning before January 1, 1988, and the amount of the deferred tax has not been paid for any income year beginning before January 1, 1988, the amount of the net operating loss carryovers which may be carried to income years beginning after December 31, 1987, for purposes of this chapter, shall be reduced by the amount of the tax preferences attributable to the deferred tax which has not been paid.

(B) In the case of a net operating loss allowed to be carried forward under

subdivision (e) of Section 24416, subparagraph (A) shall apply to the extent that such a loss would have resulted in a deferred tax under prior law.

(d) (1) Section 56(f)(2)(B) of the Internal Revenue Code, relating to adjustments for certain taxes, is modified to read: The amount determined under subparagraph (A) shall be appropriately adjusted to disregard any tax on or measured by income.

(2) The last sentence of Section 56(f)(2)(B) of the Internal Revenue Code, relating to taxes imposed by a foreign country or possession, shall not be applicable.

(3) Section 56(f)(2)(C)(i) of the Internal Revenue Code, relating to consolidated returns, is modified to substitute "combined report" for "consolidated return."

(4) Section 56(f)(2)(C)(ii) of the Internal Revenue Code, relating to treatment of dividends of related corporations, is modified to read: Adjusted net book income shall take into account only those dividends (or portions thereof) which have been included in net income for purposes of determining the regular tax.

(5) Section 56(f)(2)(F) of the Internal Revenue Code, relating to treatment of dividends from 936 corporations, shall not be applicable.

(6) Section 56(f)(2)(G) of the Internal Revenue Code, relating to rules for Alaska native corporations, shall not be applicable.

(7) With respect to corporations which are not subject to the tax imposed under Chapter 2 (commencing with Section 23101), the amount of interest income included in book income shall not exceed the amount of interest income included for purposes of the regular tax.

(8) Appropriate adjustments shall be made to limit deductions from book income for interest expense in accordance with Sections 24344 and 24425.

(e) Section 56(g)(4)(A) of the Internal Revenue Code is modified to provide that in the case of any property placed in service on or after January 1, 1981, and prior to January 1, 1987, and not described in clause (i), (ii), or (iii) of Section 56(g)(4)(A) of the Internal Revenue Code, the amount allowable as depreciation or amortization with respect to that property shall be the same amount that would have been allowable for the income year had the taxpayer depreciated the property under the straight-line method for each income year of the useful life (determined without regard to Section 24354.2 or 24381) for which the taxpayer has held the property.

(f) (1) Section 56(g)(4)(C) of the Internal Revenue Code, relating to disallowance of items not deductible in computing earnings and profits, shall be modified as follows:

(A) A deduction shall be allowed for amounts allowable as a deduction for purposes of the regular tax under Sections 24402, 24410, 24411, and 25106.

(B) Section 56(g)(4)(C)(ii) of the Internal Revenue Code, relating to special rule for 100 percent dividends, shall not be applicable.

(C) Section 56(g)(4)(C)(iii) of the Internal Revenue Code, relating to special rule for dividends from Section 936 companies, shall not be applicable.

(2) With respect to corporations which are not subject to the tax imposed under Chapter 2 (commencing with Section 23101), the amount of interest income included in the adjusted current earnings shall not exceed the amount of interest income included for purposes of the regular tax.

(3) Appropriate adjustments shall be made to limit deductions from adjusted current earnings for interest expense in accordance with Sections 24344 and 24425.

SECTION 48. Section 23732 of the Revenue and Taxation Code is amended to read:

23732. The provisions of Section 512 of the Internal Revenue Code, relating to unrelated business taxable income, shall apply, except as otherwise provided.

(a) Section 512(a)(2) of the Internal Revenue Code, relating to special rules for foreign organizations, shall not be applicable.

(b) Section 512(a)(3) of the Internal Revenue Code, relating to special rules applicable to certain organizations, shall be modified as follows:

(1) The reference to Section 501(c)(7) of the Internal Revenue Code, relating to clubs organized for pleasure, recreation, and other nonprofitable purposes, shall be modified to refer to Section 23701g.

(2) The reference to Section 501(c)(9) of the Internal Revenue Code, relating to voluntary employees' beneficiary associations, shall be modified to refer to Section 23701i.

(3) The reference to Section 501(c)(17) of the Internal Revenue Code, relating to trusts providing for payment of supplemental unemployment compensation benefits, shall be modified to refer to Section 23701n.

(4) The reference to Section 501(c)(20) of the Internal Revenue Code, relating to qualified group legal services plans, shall be modified to refer to Section 23701q.

(c) Section 512(b)(10) of the Internal Revenue Code, relating to charitable contributions, shall be modified to provide that such deductions shall not exceed 5 percent of the unrelated business taxable income, rather than 10 percent.

SECTION 49. Section 23735 of the Revenue and Taxation Code is amended to read:

23735. (a) The provisions of Section 514 of the Internal Revenue Code, relating to unrelated debt-financed income, shall apply, except as otherwise provided.

(b) The provisions of Section 10214 of Public Law 100-203, relating to the treatment of certain partnership allocations, shall apply to income years beginning on or after January 1, 1991, for property acquired by the partnership after October 13, 1987, and partnership interests acquired after October 13, 1987.

SECTION 50. Section 23802 of the Revenue and Taxation Code is amended to read:

23802. (a) Section 1363(a) of the Internal Revenue Code, relating to the taxability of an S corporation, shall not be applicable.

(b) Corporations qualifying under this chapter shall continue to be subject to the taxes imposed under Chapter 2 (commencing with Section 23101) and Chapter 3

(commencing with Section 23501), except as follows:

(1) The tax imposed under Section 23151 or 23501 shall be imposed at a rate of 2½ percent rather than the rate specified in those sections.

(2) In the case of an "S corporation" which is also a financial corporation, the rate of tax specified in paragraph (1) shall be increased by the excess of the rate imposed under Section 23183 over the rate imposed under Section 23151 and Section 23184 shall be applicable.

(3) An "S corporation" shall not be subject to the alternative minimum tax (or preference tax) imposed under Section 23400.

(c) An "S corporation" shall be subject to the minimum tax imposed under Section 23153.

(d) (1) For purposes of subdivision (b), an "S corporation" shall be allowed a deduction under Section 24416 (relating to net operating loss deductions), but only with respect to losses incurred during periods in which the corporation had in effect a valid election to be treated as an "S corporation" for purposes of this part.

(2) Section 1371(b) of the Internal Revenue Code, relating to denial of carryovers between "C years" and "S years", shall apply for purposes of the tax imposed under subdivision (b), except as provided in paragraph (1) of this subdivision.

(3) The provisions of this subdivision shall not affect the amount of any item of income or loss computed in accordance with the provisions of Section 1366 of the Internal Revenue Code, relating to pass-thru items to shareholders.

(4) For purposes of subdivision (b) of Section 17276, relating to limitations on loss carryovers, losses passed through to shareholders of an "S corporation," to the extent otherwise allowable without application of that subdivision, shall be fully included in the net operating loss of that shareholder and then that subdivision shall be applied to the entire net operating loss.

(e) For purposes of computing the taxes specified in subdivision (b), an "S corporation" shall be allowed a deduction from income for built-in gains and passive investment income for which a tax has been imposed under this part in accordance with the provisions of Section 1374 of the Internal Revenue Code, relating to tax imposed on certain built-in gains, or Section 1375 of the Internal Revenue Code, relating to tax imposed on passive investment income.

(f) For purposes of computing taxes imposed under this part, as provided in subdivision (b) --

(1) An "S corporation" shall compute its deductions for amortization and depreciation in accordance with the provisions of Part 10 (commencing with Section 17001) of Division 2.

(2) The provisions of Section 465 of the Internal Revenue Code, relating to limitation of deductions to the amount at risk, shall be applied in the same manner as in the case of an individual.

(3) (A) The provisions of Section 469 of the Internal Revenue Code, relating to limitations on passive activity losses and credits, shall be applied in the same manner as in the case of an individual.

(B) For purposes of this paragraph, the "adjusted gross income" of the "S corporation" shall be equal to its "net income," as determined under Section 24341 with the modifications required by this subdivision.

(g) The amendments to Section 1363 of the Internal Revenue Code made by Section 2004 of Public Law 100-647, relating to effect of election on corporation, shall apply to income years beginning on or after January 1, 1991.

(h) The provisions of Section 1363(d) of the Internal Revenue Code, relating to recapture of LIFO benefits, shall be modified for purposes of this part to refer to Section 25901a in lieu of Section 6601 of the Internal Revenue Code.

SECTION 51. Section 24274 of the Revenue and Taxation Code is repealed.

SECTION 52. Section 24402 of the Revenue and Taxation Code is amended to read:

24402. (a) A portion of the dividends received during the income year declared from income which has been included in the measure of the taxes imposed under Chapter 2 (commencing with Section 23101), Chapter 2.5 (commencing with Section 23400), or Chapter 3 (commencing with Section 23501) upon the taxpayer declaring the dividends.

(b) The portion of dividends which may be deducted under this section shall be as follows:

(1) In the case of any dividend described in subdivision (a), received from a "more than 50 percent owned corporation," 100 percent.

(2) In the case of any dividend described in subdivision (a), received from a "20 percent owned corporation," 80 percent.

(3) In the case of any dividend described in subdivision (a), received from a bank or corporation which is less than 20 percent owned, 70 percent.

(c) For purposes of this section:

(1) The term "more than 50 percent owned corporation" means any bank or corporation if more than 50 percent of the stock of that bank or corporation (by vote and value) is owned by the taxpayer. For purposes of the preceding sentence, stock described in Section 1504(a)(4) of the Internal Revenue Code shall not be taken into account.

(2) The term "20 percent owned corporation" means any bank or corporation if 20 percent or more of the stock of that bank or corporation (by vote and value) is owned by the taxpayer. For purposes of the preceding sentence, stock described in Section 1504(a)(4) of the Internal Revenue Code shall not be taken into account.

SECTION 53. Section 24422.3 of the Revenue and Taxation Code is amended to read:

24422.3. Capitalization and inclusion in inventory costs of certain expenses shall be determined in accordance with Section 263A of the Internal Revenue Code.

SECTION 54. Section 24457 of the Revenue and Taxation Code is amended to read:

24457. (a) Section 304 of the Internal Revenue Code, relating to redemption through the use of related corporations, shall be applicable, except as otherwise provided.

(b) For purposes of applying the provisions of Section 304(b)(4) of the Internal Revenue Code, the term "affiliated group" means a controlled group within the meaning of Section 24564.

SECTION 55. Section 24533 of the Revenue and Taxation Code is amended to read:

24533. (a) Section 24532 shall apply only if either –

(1) The distributing corporation, and the controlled corporation (or, if stock of more than one controlled corporation is distributed, each of such corporations) is engaged immediately after the distribution in the active conduct of a trade or business; or

(2) Immediately before the distribution, the distributing corporation had no assets other than stock or securities in the controlled corporations and each of the controlled corporations is engaged immediately after the distribution in the active conduct of a trade or business.

(b) For purposes of subsection (a), a corporation shall be treated as engaged in the active conduct of a trade or business if and only if –

(1) It is engaged in the active conduct of a trade or business, or substantially all of its assets consist of stock and securities of a corporation controlled by it (immediately after the distribution) which is so engaged;

(2) Such trade or business has been actively conducted throughout the five-year period ending on the date of the distribution;

(3) Such trade or business was not acquired within the period described in paragraph (2) in a transaction in which gain or loss was recognized in whole or in part; and

(4) Control of a corporation which (at the time of acquisition of control) was conducting such trade or business –

(A) Was not acquired by any distributee corporation directly (or through one or more corporations, whether through the distributing corporation or otherwise) within the period described in paragraph (2) and was not acquired by the distributing corporation directly (or through one or more corporations) within that period, or

(B) Was so acquired by any such corporation within that period, but, in each case in which such control was so acquired, it was so acquired, only by reason of transactions in which gain or loss was not recognized in whole or in part, or only by reason of such transactions combined with acquisitions before the beginning of that period.

(C) For purposes of this paragraph, all distributee corporations which are members of a controlled group (within the meaning of Section 24564) shall be treated as

one distributee corporation.

(c) For income years beginning on or after January 1, 1991, Section 311 of the Internal Revenue Code (as incorporated by Section 24481) shall apply to any distribution:

(1) To which this section (or so much of Sections 24535 to 24539, inclusive, as relates to this section) applies, and

(2) Which is not in pursuance of a plan of reorganization, in the same manner as if the distribution were a distribution to which Chapter 2 (commencing with Section 23101) or Chapter 2.5 (commencing with Section 23400) applies, except that Section 311(b) of the Internal Revenue Code shall not apply to any distribution of stock or securities in the controlled corporation.

(d) (1) Except as provided in paragraph (2), the amendments to this section by the act adding this subdivision shall apply to income years beginning on or after January 1, 1991, for distributions or transfers after December 15, 1987.

(2) The amendments to this section by the act adding this subdivision shall not apply to any distribution after December 15, 1987, and before January 1, 1993, if:

(A) Eighty percent or more of the stock of the distributing corporation was acquired by the distributee before December 15, 1987, or

(B) Eighty percent or more of the stock of the distributing corporation was acquired by the distributee before January 1, 1991, pursuant to a binding written contract or tender offer in effect on December 15, 1987.

For purposes of the preceding sentence, stock described in Section 1504(a)(4) of the Internal Revenue Code shall not be taken into account.

(3)(A) For purposes of paragraph (2), all corporations which were in existence on the designated date and were members of the same controlled group (as defined in Section 24564) which included the distributees on that date shall be treated as one distributee.

(B) Subparagraph (A) shall not exempt any distribution from the amendments made to this section by the act adding this subdivision if that distribution is with respect to stock not held by the distributee (determined without regard to subparagraph (A)) on the designated date directly or indirectly through a corporation which goes out of existence in the transaction.

(C) For purposes of this paragraph, the term "designated date" means the later of:

(i) December 15, 1987, or

(ii) The date on which the acquisition meeting the requirements of paragraph (2) occurred.

SECTION 56. Section 24601 of the Revenue and Taxation Code is amended to read:

24601. The provisions of Sections 404, 404A, 406, 407, 419, and 419A of the Internal Revenue Code shall apply, except as otherwise provided.

SECTION 57. Section 24652 of the Revenue and Taxation Code is amended to read:

24652. The method of accounting for corporations engaged in farming shall be determined in accordance with Section 447 of the Internal Revenue Code.

SECTION 58. Section 24667 of the Revenue and Taxation Code is amended to read:

24667. (a) (1) Installment sales shall be treated in accordance with Sections 453, 453A, 453B, and 453C of the Internal Revenue Code, except as otherwise provided.

(2) For purposes of applying the provisions of Section 453C of the Internal Revenue Code, relating to certain indebtedness treated as payment on installment obligations, the provisions of Sections 811(c)(2), 811(c)(4), 811(c)(6), and 811(c)(7) of Public Law 99-514, as modified by Section 1008(f) of Public Law 100-647, shall apply to income years beginning on or after January 1, 1988.

(3) The provisions of Section 812 of Public Law 99-514, relating to the disallowance of use of the installment method for certain obligations, as modified by Section 1008(g) of Public Law 100-647, shall apply to income years beginning on or after January 1, 1988.

(b) For purposes of subdivision (a), any references in the Internal Revenue Code to sections that have not been incorporated into this part by reference shall be deemed to refer to the corresponding section, if any, of this part.

(c) In the case of any taxpayer who made sales under a revolving credit plan and was on the installment method under former Section 24667 or 24668 for the taxpayer's last income year beginning before January 1, 1988, the provisions of this section shall be treated as a change in method of accounting for its first income year beginning after December 31, 1987, and all of the following shall apply:

(1) That change shall be treated as initiated by the taxpayer.

(2) That change shall be treated as having been made with the consent of the Franchise Tax Board.

(3) The period for taking into account adjustments under Article 6 (commencing with Section 24721) by reason of that change shall not exceed four years.

(d) The repeal of Section 453C of the Internal Revenue Code by Section 10202(a) of Public Law 100-203, relating to repeal of the proportionate disallowance of the installment method, shall apply to dispositions on or after January 1, 1991.

(e) (1) The amendments to Section 453 of the Internal Revenue Code by Section 2004 of Public Law 100-647, relating to the installment method, shall apply to income years beginning on or after January 1, 1991.

(2) In the case of any installment obligation to which Section 453(l)(2)(B) of the Internal Revenue Code applies, in lieu of the provisions of Section 453(l)(3)(A) of the Internal Revenue Code, the "tax" (as defined by subdivision (a) of Section 23036) for any income year for which payment is received on that obligation shall be increased by the

amount of interest determined in the manner provided under Section 453(l)(3)(B) of the Internal Revenue Code.

(3) The provisions of Section 10202(e)(2) and 10204(b)(2)(B) of Public Law 100-203, relating to change in method of accounting, are modified to provide that any adjustments required by Section 481 of the Internal Revenue Code shall be included in gross income as follows:

(A) Fifty percent in the first income year beginning on or after January 1, 1991.

(B) Fifty percent in the second income year beginning on or after January 1, 1991.

(f) (1) The amendments to Section 453A of the Internal Revenue Code made by Section 2004 of Public Law 100-647, relating to special rules for nondealers, shall apply to income years beginning on or after January 1, 1991.

(2) In the case of any installment obligation to which Section 453A of the Internal Revenue Code applies and which is outstanding as of the close of the income year, in lieu of the provisions of Section 453A(c)(1) of the Internal Revenue Code, the "tax" (as defined by subdivision (a) of Section 23036) for the income year shall be increased by the amount of interest determined in the manner provided under Section 453A(c)(2) of the Internal Revenue Code.

(3) The provisions of Section 453A(c)(3)(B) of the Internal Revenue Code, relating to the maximum rate used in calculating the deferred tax liability, are modified to refer to the maximum rate of tax imposed under Section 23151, 23186, or 23802, whichever applies, in lieu of the maximum rate of tax imposed under Section 11 of the Internal Revenue Code.

SECTION 59. Section 24673.2 of the Revenue and Taxation Code is amended to read:

24673.2. (a) Long-term contracts shall be accounted for in accordance with the special rules set forth in Section 460 of the Internal Revenue Code.

(b) (1) The provisions of Section 804(d) of Public Law 99-514, relating to the effective date of modifications in the method of accounting for long-term contracts, shall be applicable to income years beginning on or after January 1, 1987.

(2) In the case of a contract entered into after February 28, 1986, during an income year beginning before January 1, 1987, an adjustment to income shall be made upon completion of the contract, if necessary, to correct any underreporting or over reporting of income, for purposes of this part, resulting from differences between state and federal law for the income year in which the contract began.

(c) In the case of a contract entered into after October 13, 1987, during an income year beginning before January 1, 1991, an adjustment to income shall be made upon completion of the contract, if necessary, to correct any underreporting or overreporting of income, for purposes of this part, resulting from differences between state and federal law for taxable years beginning prior to January 1, 1991.

(d) In the case of a contract entered into after June 20, 1988, during an income

year beginning before January 1, 1991, an adjustment to income shall be made upon completion of the contract, if necessary, to correct any underreporting or overreporting of income, for purposes of this part, resulting from differences between state and federal law for taxable years beginning prior to January 1, 1991.

(e) For purposes of applying Section 460(a)(2) of the Internal Revenue Code, relating to 90 percent look-back method, any adjustment to income computed under subdivision (b), (c), or (d) shall be deemed to have been reported in the income year from which the adjustment arose, rather than the income year in which the contract was completed.

SECTION 60. Section 24681 of the Revenue and Taxation Code is amended to read:

24681. The provisions of Section 461 of the Internal Revenue Code, relating to the general rule for taxable year of deduction, shall be applicable, except as otherwise provided.

SECTION 61. Section 24685 of the Revenue and Taxation Code is repealed.

SECTION 62. Section 24685 is added to the Revenue and Taxation Code, to read

24685. (a) In the case of any taxpayer who elected to have former Section 24685 apply to its last income year beginning prior to January 1, 1991, and who is required to change its method of accounting by reason of the amendments made by the act adding this section, each of the following shall apply:

(1) The change shall be treated as initiated by the taxpayer,

(2) The change shall be treated as having been made with the consent of the Franchise Tax Board, and

(3) The net amount of adjustments required by Article 6 (commencing with Section 24721) to be taken into account by the taxpayer:

(A) Shall be reduced by the balance in the suspense account under subdivision (c) of former Section 24685 as of the close of the last income year beginning before January 1, 1991, and

(B) Shall be taken into account over the two income year period beginning with the income year following that last income year, as follows:

In the case of the:	The percentage to be taken into account is:
1st Year	50
2nd Year	50

(b) Notwithstanding subparagraph (B) of paragraph (3) of subdivision (a), if the period during which the adjustments are required to be taken into account under Article 6 (commencing with Section 24271) is less than two years, those adjustments shall be

taken into account ratably over the shorter period.

SECTION 63. Section 24692 of the Revenue and Taxation Code is amended to read:

24692. (a) The treatment of passive activity losses and credits shall be determined in accordance with Section 469 of the Internal Revenue Code, except as otherwise provided.

(b) For purposes of this part, the provisions of Section 469(d)(2) of the Internal Revenue Code, relating to passive activity credits, are modified to refer to the following credits: (1) The credit for research expenses allowed by Section 23609.

(2) The credit for clinical testing expenses allowed by Section 23609.5.

(3) The credit for low-income housing allowed by Section 23610.5.

(4) The credit for certain wages paid (targeted jobs) allowed by Section 23621.

(c) For purposes of applying the provisions of Section 469(i) of the Internal Revenue Code, relating to the twenty-five thousand dollars ($25,000) offset for rental real estate activities, the dollar limitation for the credit allowed under Section 23610.5 (relating to low-income housing) shall be equal to seventy-five thousand dollars ($75,000) in lieu of the amount specified in Section 469(i)(2) of the Internal Revenue Code.

(d) Section 502 of the Tax Reform Act of 1986 (Public Law 99-514) shall apply.

(e) For income years beginning on or after January 1, 1987, the provisions of Section 10212 of Public Law 100-203, relating to treatment of publicly traded partnerships under Section 469 of the Internal Revenue Code, shall be applicable.

(f) The amendments to Section 469(k) of the Internal Revenue Code made by Section 2004 of Public Law 100-647, relating to separate application of section in case of publicly traded partnerships, shall apply to income years beginning on or after January 1, 1991.

SECTION 64. Section 24990.5 of the Revenue and Taxation Code is amended to read:

24990.5. (a) Section 1201 of the Internal Revenue Code, relating to alternative tax for corporations, shall not be applicable.

(b) The provisions of Section 1212 of the Internal Revenue Code, relating to capital loss carrybacks and carryovers, shall be modified as follows:

(1) Section 1212(a)(1)(A) of the Internal Revenue Code, relating to capital loss carrybacks, shall not apply.

(2) Section 1212(a)(3) of the Internal Revenue Code, relating to special rules on carrybacks, shall not apply.

(3) Sections 1212(b) and 1212(c) of the Internal Revenue Code, relating to taxpayers other than a corporation, shall not apply.

SECTION 65. Unless otherwise specifically provided, this act shall be applied in the computation of taxes for taxable or income years beginning on or after January 1, 1991.

TITLE VI.
GENERAL PROVISIONS

SECTION 66. If any provision of this measure or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the measure which can be given effect without the invalid provision or application, and to this end the provisions of this measure are severable.

SECTION 67. The statutory provisions contained in this measure may not be amended by the Legislature except as follows:

(a) Sections 4 and 38 through 65 may be amended by statute passed in each house, a majority of the membership concurring, or by a statute that becomes effective only when approved by the electors.

(b) All other statutory provisions contained in this measure may be amended by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

Proposition 129
"The Comprehensive Crime Reduction and Drug Control Act of 1990"
Distribution of Funds in the "Anti-Drug Superfund"
(dollars in thousands)

Fiscal Year	Transfers from the General Fund to the Anti-Drug Superfund	Continuous Appropriations from the Anti-Drug Superfund: Department of Justice (a)	Local Law Enforcement Agencies (b)	Boards of Supervisors (c)	Total
1990-91	$102,000	--	$60,000	$40,000	$100,000
1991-92	459,000	$22,000	120,000	80,000	222,000
1992-93	407,000	22,880	124,800	83,200	230,880
1993-94	183,000	23,795	129,792	86,528	240,115
1994-95	100,000 (d)	24,747	134,984	89,989	249,720
1995-96	100,000 (d)	25,737	140,383	93,589	259,709
1996-97	100,000 (d)	26,766	145,998	97,332	270,096
1997-98	100,000 (d)	27,837	151,838	101,226	280,901
Totals	$1,551,000	$173,762	$1,007,795	$671,864	$1,853,421

Notes:

(a) For support of the Department of Justice's CrackDown Task Force Program.

(b) For distribution to county sheriffs' and city police departments for law enforcement and crime prevention activities related to drugs.

(c) For distribution to county boards of supervisors for drug treatment and prevention, probation supervision, and prosecution of drug offenders.

(d) Transfers from 1994-95 through 1997-98 based on Franchise Tax Board revenue estimates. Because tax changes contained in the measure have already been enacted, it is not clear whether any transfers would be made during this four-year period.

COMPREHENSIVE CRIME REDUCTION AND DRUG CONTROL ACT OF 1990

October 10, 1989

As Amended November 21, 1989

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INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

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The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

(Here set forth the title and summary prepared by the Attorney General. This title and summary must also be printed across the top of each page of the petition whereon signatures are to appear.)

TO THE HONORABLE SECRETARY OF STATE OF CALIFORNIA

12-pt Roman bold-face type

We, the undersigned, registered, qualified voters of California, residents of _____ County (or City and County), hereby propose amendments to the Constitution of California, the Code of Civil Procedure, the Evidence Code, the Government Code, the Penal Code, and the Revenue and Taxation Code relating to crimes, and to make appropriations and authorize the issuance of bonds relating thereto, and petition the Secretary of State to submit the same to the voters of California for their adoption or rejection at the next succeeding general election or at any special statewide election held prior to that general election or otherwise as provided by law. The proposed constitutional and statutory amendments (full title and text of the measure) read as follows:

TITLE I.
PURPOSE

SECTION 1. This act shall be known as the Comprehensive Crime Reduction and Drug Control Act of 1990.

SECTION 2. We, the People of the State of California, find and declare:

(a) As Californians, we have the inalienable right to be free from crime, to be secure in our homes, to be safe on our streets, and to be protected in our schools.

(b) Government has failed to assure our right to be free from crime.

(1) Too few criminals are identified and apprehended.

(2) Those who are apprehended are accorded rights by our courts and by our state Legislature that prevent administration of swift and sure justice, that have unnecessarily expanded the rights of accused criminals far beyond that which is required by the United States Constitution, that have unnecessarily added to the costs of criminal cases, that have diverted the judicial process from its function as a quest for truth, and that have too often ignored the rights of crime victims. Comprehensive reforms are needed in order to restore balance and fairness to our criminal justice system.

(3) Those who are convicted too often evade the full measure of punishment the law was intended to provide because California suffers from an acute shortage of prison capacity, often resulting in prisoners being released before serving their full terms, frequently to return to their criminal enterprises upon release.

(c) Certainty and swiftness of punishment deter crime:

(1) Delays in apprehension and the prospect of evading apprehension altogether diminish the deterrent effect of the criminal law.

(2) Convoluted procedures that obstruct the pursuit of truth have protracted criminal trials, needlessly delaying punishment and impeding deterrence.

(3) Inadequate prison and jail facilities lead to early offender release and the prospect of their evading the full punishment of the law.

(4) The death penalty is a deterrent to murder, but protracted delays in capital trials impede its effectiveness as a deterrent.

(d) Much of our crime problem can be traced to illicit drugs, particularly cocaine and, most recently, crack cocaine. The widespread use of such drugs has conferred vast wealth on the dealers, has contributed to the dramatic expansion of California's street gangs, and has attracted international drug traffickers who increasingly base their smuggling and national distribution in California. The lucrative narcotics trade in turn spawns a wide range of crimes -- ranging from drug-law violations to violent crimes of all kinds. Drugs are California's largest and fastest-growing crime problem. They threaten to overwhelm the entire criminal justice system, from police to courts to prisons. Drug-related crime is a problem of such size and scope that it requires a comprehensive solution.

(e) Increased efforts to prevent children from using drugs, and to treat drug addicts, can reduce the demand for drugs, thereby diminishing the profitability of the drug

trade and the threat of drug-related crime.

(f) The federal government has failed to acknowledge and respond to the acute dangers California faces because of the failure to secure our international borders and the presence here of traffickers, driven from other states by federal law enforcement programs. By failing to allocate the resources it has committed to other states, the federal government has increased the concentration of drug traffickers here.

(g) Increased law-enforcement resources in California applied in a coordinated program of drug-interdiction can reduce the volume of drugs poisoning our society and can increase the apprehension of the traffickers.

(h) Merely increasing the rate of apprehension of criminals would clog already gridlocked courts. Merely increasing the rate of conviction of criminals is of little value without prisons in which to hold them. A coordinated program to improve law-enforcement, the administration of justice, and correctional programs is necessary to deal effectively with the surge in drug-related crime and violent crimes of all kinds.

(i) Additional state revenues are necessary to fund the increased law enforcement, treatment, and crime prevention efforts, which, together with speedier administration of justice and increased prison capacity, can make Californians safer from crime and substance abuse. Revenues sufficient for this purpose can be raised by conforming California corporate tax law to federal law, and thereby closing loopholes in California law.

SECTION 3. The People adopt this act for the following purposes:

(a) To provide a coordinated program that will

(1) improve law enforcement and increase apprehension of criminal offenders,

(2) improve the administration of criminal justice, to assure that those accused of crimes are dealt with fairly and swiftly,

(3) provide the capacity to incarcerate those who commit crimes for the full measure of their punishment;

(b) To reform the law as developed in numerous California Supreme Court decisions and as set forth in the statutes of this state in order to restore balance to our criminal justice system, to create a system in which justice is swift and fair, and to create a system in which violent criminals receive just punishment, in which crime victims and witnesses are treated with care and respect, and in which society as a whole can be free from the fear of crime in our homes, neighborhoods, and schools; and

(c) To provide special programs to deal with those who are responsible for a major share of the crime afflicting us all, those who use and traffic in illicit drugs.

TITLE II.
INCREASED DRUG INTERDICTION AND CRIMINAL APPREHENSION

SECTION 4. Article 7.7 (commencing with Section 16419) is added to Chapter 2 of Part 2 of Division 2 of Title 2 of the Government Code, to read:

Article 7.7. California Anti-Drug Superfund

16419. The California Anti-Drug Superfund is hereby created in the State Treasury. All moneys in the fund shall be invested pursuant to Sections 16470 through 16474, inclusive, of the Government Code.

16419.1. (a) The Controller shall transfer from the General Fund to the California Anti-Drug Superfund an amount equal to one hundred two million dollars ($102,000,000) by January 1, 1991, four hundred fifty-nine million dollars ($459,000,000) by July 15, 1991, four hundred seven million dollars ($407,000,000) by January 1, 1993, and one hundred eighty-three million dollars ($183,000,000) by January 1, 1994.

(b) (1) For each fiscal year commencing on or after July 1, 1994, the Franchise Tax Board shall make an estimate of the amount of additional revenues that will be generated in that fiscal year by the act adding this article. This estimate shall be transmitted to the Controller prior to the commencement of the fiscal year to which it relates.

(2) By July 15, 1994, and by July 15 of each subsequent fiscal year, the Controller shall transfer from the General Fund to the California Anti-Drug Superfund an amount equal to the amount determined under paragraph (1) as additional revenues for that fiscal year.

16419.2. Notwithstanding Section 13340, all money in the California Anti-Drug Superfund is hereby continuously appropriated without regard to fiscal years as follows:

(a) To the Department of Justice to implement the CrackDown Task Force Program specified in Section 15029 of the Government Code, or to match any available federal funds which are to be expended for similar purposes, as follows:

(1) Twenty-two million dollars ($22,000,000) by July 15, 1991.

(2) Twenty-two million eight hundred eighty thousand dollars ($22,880,000) by July 15, 1992.

(3) Twenty-three million seven hundred ninety-five thousand dollars ($23,795,000) by July 15, 1993.

(4) Twenty-four million seven hundred forty-seven thousand dollars ($24,747,000) by July 15, 1994.

(5) Twenty-five million seven hundred thirty-seven thousand dollars ($25,737,000) by July 15, 1995.

(6) Twenty-six million seven hundred sixty-six thousand dollars ($26,766,000) by July 15, 1996.

(7) Twenty-seven million eight hundred thirty-seven thousand dollars ($27,837,000) by July 15, 1997.

(b) To the Controller for allocation to all county sheriffs' departments and city police departments in this state, to be used only for law enforcement and crime prevention activities related to the abuse of controlled substances, to provide added protection for schools and neighborhoods besieged by gangs and drugs, or to match any available federal funds which are to be expended for similar purposes, as determined to be necessary by the sheriffs or chiefs of police of those counties or cities, as follows:

(1) Sixty million dollars ($60,000,000) by January 1, 1991.

(2) One hundred twenty million dollars ($120,000,000) by July 15, 1991.

(3) One hundred twenty-four million eight hundred thousand dollars ($124,800,000) by July 15, 1992.

(4) One hundred twenty-nine million seven hundred ninety-two thousand dollars ($129,792,000) by July 15, 1993.

(5) One hundred thirty-four million nine hundred eighty-four thousand dollars ($134,984,000) by July 15, 1994.

(6) One hundred forty million three hundred eighty-three thousand dollars ($140,383,000) by July 15, 1995.

(7) One hundred forty-five million nine hundred ninety-eight thousand dollars ($145,998,000) by July 15, 1996.

(8) One hundred fifty-one million eight hundred thirty-eight thousand dollars ($151,838,000) by July 15, 1997.

(9) (A) All funds specified in this subdivision (b) shall be distributed to all participating county sheriffs' departments and city police departments based upon the most recent estimates of the population of the departments' service areas, as determined in the manner specified by Section 11005 of the Revenue and Taxation Code. For this purpose, except as specified in subparagraph (B), the estimate of the population of counties shall not include the population of city police department service areas therein.

(B) For a charter city and county, the total annual funds specified in subparagraph (A) which are available to a charter city and county shall be divided equally between the county sheriff's department and the city police department.

(c) To the Controller for allocation to all county boards of supervisors in this state, to be used only for controlled substance treatment and substance-abuse prevention programs (including treatment and substance-abuse prevention in schools), enhancement of probation supervision of offenders with drug-related problems, prosecution and processing of controlled substance offenders, or to match any available federal funds which are to be expended for similar purposes, as determined to be necessary by those county boards of supervisors, as follows:

(1) Forty million dollars ($40,000,000) by January 1, 1991.

(2) Eighty million dollars ($80,000,000) by July 15, 1991.

(3) Eighty-three million, two hundred thousand dollars ($83,200,000) by July 15, 1992.

(4) Eighty-six million, five hundred twenty-eight thousand dollars ($86,528,000) by July 15, 1993.

(5) Eighty-nine million, nine hundred eighty-nine thousand dollars ($89,989,000) by July 15, 1994.

(6) Ninety-three million, five hundred eighty-nine thousand dollars ($93,589,000) by July 15, 1995.

(7) Ninety-seven million, three hundred thirty-two thousand dollars ($97,332,000) by July 15, 1996.

(8) One hundred one million, two hundred twenty-six thousand dollars

($101,226,000) by July 15, 1997.

(9) All funds specified in this subdivision (c) shall be distributed to all participating county boards of supervisors based upon the most recent estimates of the population of the participating counties as determined in the manner specified by Section 11005 of the Revenue and Taxation Code.

(d) To the Controller and the Franchise Tax Board in an amount equal to their costs incurred in connection with their duties under this article as those costs are determined by the Department of Finance.

(e) The funds provided under this article shall not supplant existing funds for substance abuse programs.

16419.3. (a) On January 1, 1992, and on January 1 of each year thereafter, all county sheriff's departments, city police departments, and county boards of supervisors which received funds in the immediately preceding fiscal year under this article shall provide a report to the Auditor General disclosing how those funds were expended.

(b) Based on the reports provided under subdivision (a), and any other relevant information, the Auditor General shall make a determination as to whether the funds received under this article were expended for proper purposes or whether those funds supplanted other funds for substance abuse programs. On or before June 1, 1992, and on or before June 1 of each subsequent year, the Auditor General shall report its findings to the Legislature and the Controller.

(c) Based upon the report submitted under subdivision (b), for years beginning on or after July 1, 1992, the Controller shall, for one year, withhold any funds pursuant to this article from those county sheriffs' departments, city police departments, or county boards of supervisors found in the report to have, in the preceding year, used funds provided under this article to supplant other funds for substance abuse purposes, or otherwise did not use the funds for the purposes of this article.

16419.4. The Joint Legislative Audit Committee shall evaluate the California Anti-Drug Superfund program provided by this article and make a report of that evaluation to the Legislature before January 1, 1998. The report shall include, among other things, the following:

(a) An accounting of how the funds were expended by local law enforcement agencies and county boards of supervisors.

(b) The effect of the program on controlled substance-related arrests, criminal activity, and prosecutions.

(c) The effect of the program on controlled substance abuse and treatment.

16419.5. Should the Controller determine that the funds available in the California Anti-Drug Superfund will not be sufficient to permit a given year's allocations in the amounts provided in Section 16419.2, the Controller shall reduce the allocations to the Department of Justice, county sheriffs' departments, city police departments, and county boards of supervisors by an equal percentage.

16419.6. The Controller may promulgate rules and regulations he or she deems necessary to carry out the provisions of this article.

16419.7. This article shall remain in effect only until June 30, 1998, and as of that

date is repealed. Any funds remaining in the California Anti-Drug Superfund on that date are hereby appropriated to the Controller for allocation to the Department of Justice, county sheriffs' departments, city police departments, and county boards of supervisors in the same proportion as provided in Section 16419.2.

SECTION 5. Section 9.5 is added to Article XIII B of the Constitution, to read:

9.5. "Appropriations subject to limitation" for each entity of government do not include appropriations from the California Anti-Drug Superfund. No adjustment in the appropriation limit of any entity of government shall be required pursuant to Section 3 as a result of revenue being deposited in or appropriated from the California Anti-Drug Superfund.

This section shall remain in effect only until June 30, 1998, and as of that date is repealed.

TITLE III.
CRIMINAL JUSTICE REFORM

SECTION 6. Section 14.1 is added to Article I of the California Constitution, to read:

14.1. If a felony is prosecuted by indictment, there shall be no postindictment preliminary hearing.

SECTION 7. Section 24 of Article I of the California Constitution is amended to read:

24. Rights guaranteed by this Constitution are not dependent on those guaranteed by the United States Constitution.

In criminal cases the rights of a defendant to equal protection of the laws, to due process of law, to the assistance of counsel, to be personally present with counsel, to a speedy and public trial, to compel the attendance of witnesses, to confront the witnesses against him or her, to be free from unreasonable searches and seizures, to privacy insofar as it relates to the admissibility of evidence, to not be compelled to be a witness against himself or herself, to not be placed twice in jeopardy for the same offense, and to not suffer the imposition of cruel or unusual punishment, shall be construed by the courts of this state in a manner consistent with the Constitution of the United States. This Constitution shall not be construed by the courts to afford greater rights to criminal defendants than those afforded by the Constitution of the United States, nor shall it be construed to afford greater rights to minors in juvenile proceedings on criminal causes than those afforded by the Constitution of the United States. Nothing in this section shall be construed to abridge the right to privacy as it affects reproductive choice.

This declaration of rights may not be construed to impair or deny others retained

by the people.

SECTION 8. Section 29 is added to Article I of the California Constitution, to read:

29. In a criminal case, the people of the State of California have the right to due process of law and to a speedy and public trial.

SECTION 9. Section 30 is added to Article I of the California Constitution, to read:

30. (a) This Constitution shall not be construed by the courts to prohibit the joining of criminal cases as prescribed by the Legislature or by the people through the initiative process.

(b) In order to protect victims and witnesses in criminal cases, hearsay evidence shall be admissible at preliminary hearings, as prescribed by the Legislature or by the people through the initiative process.

(c) In order to provide for fair and speedy trials, discovery in criminal cases shall be reciprocal in nature, as prescribed by the Legislature or by the people through the initiative process.

SECTION 10. Section 223 of the Code of Civil Procedure is repealed.

SECTION 11. Section 223 is added to the Code of Civil Procedure, to read:

223. In a criminal case, the court shall conduct the examination of prospective jurors. However, the court may permit the parties, upon a showing of good cause, to supplement the examination by such further inquiry as it deems proper, or shall itself submit to the prospective jurors upon such a showing, such additional questions by the parties as it deems proper. Voir dire of any prospective jurors shall, where practicable, occur in the presence of the other jurors in all criminal cases, including death penalty cases.

Examination of prospective jurors shall be conducted only in aid of the exercise of challenges for cause.

The trial court's exercise of its discretion in the manner in which voir dire is conducted shall not cause any conviction to be reversed unless the exercise of that discretion has resulted in a miscarriage of justice, as specified in Section 13 of Article VI of the California Constitution.

SECTION 12. Section 223.5 of the Code of Civil Procedure is repealed.

SECTION 13. Section 1203.1 is added to the Evidence Code, to read:

1203.1. Section 1203 is not applicable if the hearsay statement is offered at a

preliminary examination, as provided in Section 872 of the Penal Code.

SECTION 14. Section 189 of the Penal Code is amended to read:

189. All murder which is perpetrated by means of a destructive device or explosive, knowing use of ammunition designed primarily to penetrate metal or armor, poison, lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or which is committed in the perpetration of, or attempt to perpetrate, arson, rape, robbery, burglary, mayhem, kidnapping, train wrecking, or any act punishable under Section 286, 288, 288a, or 289, is murder of the first degree; and all other kinds of murders are of the second degree.

As used in this section, "destructive device" shall mean any destructive device as defined in Section 12301, and "explosive" shall mean any explosive as defined in Section 12000 of the Health and Safety Code.

To prove the killing was "deliberate and premeditated," it shall not be necessary to prove the defendant maturely and meaningfully reflected upon the gravity of his or her act.

SECTION 15. Section 190.2 of the Penal Code is amended to read:

190.2. (a) The penalty for a defendant found guilty of murder in the first degree shall be death or confinement in state prison for a term of life without the possibility of parole in any case in which one or more of the following special circumstances has been found under Section 190.4, to be true:

(1) The murder was intentional and carried out for financial gain.

(2) The defendant was previously convicted of murder in the first degree or second degree. For the purpose of this paragraph an offense committed in another jurisdiction which if committed in California would be punishable as first or second degree murder shall be deemed murder in the first or second degree.

(3) The defendant has in this proceeding been convicted of more than one offense of murder in the first or second degree.

(4) The murder was committed by means of a destructive device, bomb, or explosive planted, hidden or concealed in any place, area, dwelling, building or structure, and the defendant knew or reasonably should have known that his or her act or acts would create a great risk of death to a human being or human beings.

(5) The murder was committed for the purpose of avoiding or preventing a lawful arrest or to perfect, or attempt to perfect an escape from lawful custody.

(6) The murder was committed by means of a destructive device, bomb, or explosive that the defendant mailed or delivered, attempted to mail or deliver, or cause to be mailed or delivered and the defendant knew or reasonably should have known that his or her act or acts would create a great risk of death to a human being or human beings.

(7) The victim was a peace officer as defined in Section 830.1, 830.2, 830.3,

830.31, 830.35, 830.36, 830.4, 830.5, 830.5a, 830.6, 830.10, 830.11 or 830.12, who, while engaged in the course of the performance of his or her duties, was intentionally killed, and such defendant knew or reasonably should have known that such victim was a peace officer engaged in the performance of his or her duties; or the victim was a peace officer as defined in the above enumerated sections of the Penal Code, or a former peace officer under any of such sections, and was intentionally killed in retaliation for the performance of his or her official duties.

(8) The victim was a federal law enforcement officer or agent, who, while engaged in the course of the performance of his or her duties, was intentionally killed, and such defendant knew or reasonably should have known that such victim was a federal law enforcement officer or agent, engaged in the performance of his or her duties; or the victim was a federal law enforcement officer or agent, and was intentionally killed in retaliation for the performance of his or her official duties.

(9) The victim was a fireman as defined in Section 245.1, who, while engaged in the course of the performance of his or her duties, was intentionally killed, and such defendant knew or reasonably should have known that such victim was a fireman engaged in the performance of his or her duties.

(10) The victim was a witness to a crime who was intentionally killed for the purpose of preventing his or her testimony in any criminal or juvenile proceeding, and the killing was not committed during the commission, or attempted commission, of the crime to which he or she was a witness; or the victim was a witness to a crime and was intentionally killed in retaliation for his or her testimony in any criminal or juvenile proceeding. As used in this paragraph, "juvenile proceeding" means a proceeding brought pursuant to Section 602 or 707 of the Welfare and Institutions Code.

(11) The victim was a prosecutor or assistant prosecutor or a former prosecutor or assistant prosecutor of any local or state prosecutor's office in this state or any other state, or a federal prosecutor's office and the murder was intentionally carried out in retaliation for or to prevent the performance of the victim's official duties.

(12) The victim was a judge or former judge of any court of record in the local state or federal system in the State of California or in any other state of the United States and the murder was intentionally carried out in retaliation for or to prevent the performance of the victim's official duties.

(13) The victim was an elected or appointed official or former official of the federal government, a local or state government of California, or of any local or state government of any other state in the United States and the killing was intentionally carried out in retaliation for or to prevent the performance of the victim's official duties.

(14) The murder was especially heinous, atrocious, or cruel, manifesting exceptional depravity. As utilized in this section, the phrase especially heinous, atrocious or cruel manifesting exceptional depravity means a conscienceless, or pitiless crime which is unnecessarily torturous to the victim.

(15) The defendant intentionally killed the victim while lying in wait.

(16) The victim was intentionally killed because of his or her race, color, religion, nationality or country of origin.

(17) The murder was committed while the defendant was engaged in or was an accomplice in the commission of, attempted commission of, or the immediate flight after committing or attempting to commit the following felonies:

(i) Robbery in violation of Section 211 or 212.5.

(ii) Kidnapping in violation of Section 207 or 209.

(iii) Rape in violation of Section 261.

(iv) Sodomy in violation of Section 286.

(v) The performance of a lewd or lascivious act upon person of a child under the age of 14 in violation of Section 288.

(vi) Oral copulation in violation of Section 288a.

(vii) Burglary in the first or second degree in violation of Section 460.

(viii) Arson in violation of subdivision (b) of Section 451.

(ix) Train wrecking in violation of Section 219.

(x) Mayhem in violation of Section 203.

(xi) Rape by instrument in violation of Section 289.

(18) The murder was intentional and involved the infliction of torture.

(19) The defendant intentionally killed the victim by the administration of poison.

(b) Unless an intent to kill is specifically required under subdivision (a) for a special circumstance enumerated therein, an actual killer as to whom such special circumstance has been found to be true under Section 190.4 need not have had any intent to kill at the time of the commission of the offense which is the basis of the special circumstance in order to suffer death or confinement in state prison for a term of life without the possibility of parole.

(c) Every person not the actual killer who, with the intent to kill, aids, abets, counsels, commands, induces, solicits, requests, or assists any actor in the commission of murder in the first degree shall suffer death or confinement in state prison for a term of life without the possibility of parole, in any case in which one or more of the special circumstances enumerated in subdivision (a) of this section has been found to be true under Section 190.4.

(d) Notwithstanding subdivision (c), every person not the actual killer, who, with reckless indifference to human life and as a major participant, aids, abets, counsels, commands, induces, solicits, requests, or assists in the commission of a felony enumerated in paragraph (17) of subdivision (a), which felony results in the death of some person or persons, who is found guilty of murder in the first degree therefor, shall suffer death or confinement in state prison for life without the possibility of parole, in any case in which a special circumstance enumerated in paragraph (17) of subdivision (a) of this section has been found to be true under Section 190.4.

(e) The penalty shall be determined as provided in Sections 190.1, 190.2, 190.3, 190.4, and 190.5.

SECTION 16. Section 190.41 is added to the Penal Code, to read:

190.41. Notwithstanding Section 190.4 or any other provision of law, the corpus

delicti of a felony-based special circumstance enumerated in paragraph (17) of subdivision (a) of Section 190.2 need not be proved independently of a defendant's extrajudicial statement.

SECTION 17. Section 190.5 of the Penal Code is amended to read:

190.5. (a) Notwithstanding any other provision of law, the death penalty shall not be imposed upon any person who is under the age of 18 at the time of the commission of the crime. The burden of proof as to the age of such person shall be upon the defendant.

(b) The penalty for a defendant found guilty of murder in the first degree, in any case in which one or more special circumstances enumerated in Section 190.2 or 190.25 has been found to be true under Section 190.4, who was 16 years of age or older and under the age of 18 years at the time of the commission of the crime, shall be confinement in the state prison for life without the possibility of parole or, at the discretion of the court, 25 years to life.

(c) The trier of fact shall determine the existence of any special circumstance pursuant to the procedure set forth in Section 190.4.

SECTION 18. Section 206 is added to the Penal Code, to read:

206. Every person who, with the intent to cause cruel or extreme pain and suffering for the purpose of revenge, extortion, persuasion, or for any sadistic purpose, inflicts great bodily injury as defined in Section 12022.7 upon the person of another, is guilty of torture.

The crime of torture does not require any proof that the victim suffered pain.

SECTION 19. Section 206.1 is added to Penal Code, to read:

206.1. Torture is punishable by imprisonment in the state prison for a term of life.

SECTION 20. Section 859 of the Penal Code is amended to read:

859. When the defendant is charged with the commission of a public offense over which the superior court has original jurisdiction, by a written complaint subscribed under oath and on file in a court within the county in which the public offense is triable, he or she shall, without unnecessary delay, be taken before a magistrate of the court in which the complaint is on file. The magistrate shall immediately deliver to the defendant a copy of the complaint, inform the defendant that he or she has the right to have the assistance of counsel, ask the defendant if he or she desires the assistance of counsel, and allow the defendant reasonable time to send for counsel. However, in a capital case, the court shall inform the defendant that the defendant must be represented in court by counsel at all stages of the preliminary and trial proceedings and that the representation will be at

the defendant's expense if the defendant is able to employ counsel or at public expense if he or she is unable to employ counsel, inquire of him or her whether he or she is able to employ counsel and, if so, whether the defendant desires to employ counsel of the defendant's choice or to have counsel assigned for him or her, and allow the defendant a reasonable time to send for his or her chosen or assigned counsel. The magistrate must, upon the request of the defendant, require a peace officer to take a message to any counsel whom the defendant may name, in the judicial district in which the court is situated. The officer shall, without delay and without a fee, perform that duty. If the defendant desires and is unable to employ counsel, the court shall assign counsel to defend him or her; in a capital case, if the defendant is able to employ counsel and either refuses to employ counsel or appears without counsel after having had a reasonable time to employ counsel, the court shall assign counsel to defend him or her. If it appears that the defendant may be a minor, the magistrate shall ascertain whether that is the case, and if the magistrate concludes that it is probable that the defendant is a minor, he or she shall immediately either notify the parent or guardian of the minor, by telephone or messenger, of the arrest, or appoint counsel to represent the minor.

SECTION 21. Section 866 of the Penal Code is amended to read:

866. (a) When the examination of witnesses on the part of the people is closed, any witness the defendant may produce shall be sworn and examined.

Upon the request of the prosecuting attorney, the magistrate shall require an offer of proof from the defense as to the testimony expected from the witness. The magistrate shall not permit the testimony of any defense witness unless the offer of proof discloses to the satisfaction of the magistrate, in his or her sound discretion, that the testimony of that witness, if believed, would be reasonably likely to establish an affirmative defense, negate an element of a crime charged, or impeach the testimony of a prosecution witness or the statement of a declarant testified to by a prosecution witness.

(b) It is the purpose of a preliminary examination to establish whether there exists probable cause to believe that the defendant has committed a felony. The examination shall not be used for purposes of discovery.

(c) This section shall not be construed to compel or authorize the taking of depositions of witnesses.

SECTION 22. Section 871.6 is added to the Penal Code, to read:

871.6. If in a felony case the magistrate sets the preliminary examination beyond the time specified in Section 859b, in violation of Section 859b, or continues the preliminary hearing without good cause and good cause is required by law for such a continuance, the people or the defendant may file a petition for writ of mandate or prohibition in the superior court seeking immediate appellate review of the ruling setting the hearing or granting the continuance. Such a petition shall have precedence over all other cases in the court to which the petition is assigned. If the superior court grants a

peremptory writ, it shall issue the writ and a remittitur three court days after its decision becomes final as to the court if this action is necessary to prevent mootness or to prevent frustration of the relief granted, notwithstanding the rights of the parties to seek review in a court of appeal. When the superior court issues the writ and remittitur as provided in this section, the writ shall command the magistrate to proceed with the preliminary hearing without further delay, other than that reasonably necessary for the parties to obtain the attendance of their witnesses.

The court of appeal may stay or recall the issuance of the writ and remittitur. The failure of the court of appeal to stay or recall the issuance of the writ and remittitur shall not deprive the parties of any right they would otherwise have to appellate review or extraordinary relief.

SECTION 23. Section 872 of the Penal Code is amended to read:

872. (a) If, however, it appears from the examination that a public offense has been committed, and there is sufficient cause to believe that the defendant is guilty, the magistrate shall make or indorse on the complaint an order, signed by him or her, to the following effect: "It appearing to me that the offense in the within complaint mentioned (or any offense, according to the fact, stating generally the nature thereof), has been committed, and that there is sufficient cause to believe that the within named A.B. is guilty, I order that he or she be held to answer to the same."

(b) Notwithstanding Section 1200 of the Evidence Code, the finding of probable cause may be based in whole or in part upon the sworn testimony of a law enforcement officer relating the statements of declarants made out of court offered for the truth of the matter asserted. Any law enforcement officer testifying as to hearsay statements shall either have five years of law enforcement experience or have completed a training course certified by the Commission on Peace Officer Standards and Training which includes training in the investigation and reporting of cases and testifying at preliminary hearings.

SECTION 24. Section 954.1 is added to the Penal Code, to read:

954.1. In cases in which two or more different offenses of the same class of crimes or offenses have been charged together in the same accusatory pleading, or where two or more accusatory pleadings charging offenses of the same class of crimes or offenses have been consolidated, evidence concerning one offense or offenses need not be admissible as to the other offense or offenses before the jointly charged offenses may be tried together before the same trier of fact.

SECTION 25. Section 987.05 is added to the Penal Code, to read:

987.05. In assigning defense counsel in felony cases, whether it be the public defender or private counsel, the court shall only assign counsel who represents, on the record, that he or she will be ready to proceed with the preliminary hearing or trial, as

the case may be, within the time provisions prescribed in this code for preliminary hearings and trials, except in those unusual cases where the court finds that, due to the nature of the case, counsel cannot reasonably be expected to be ready within the prescribed period if he or she were to begin preparing the case forthwith and continue to make diligent and constant efforts to be ready. In the case where the time of preparation for preliminary hearing or trial is deemed greater than the statutory time, the court shall set a reasonable time period for preparation. In making this determination, the court shall not consider counsel's convenience, counsel's calendar conflicts, or counsel's other business. The court may allow counsel a reasonable time to become familiar with the case in order to determine whether he or she can be ready. In cases where counsel, after making representations that he or she will be ready for preliminary examination or trial, and without good cause is not ready on the date set, the court may relieve counsel from the case and may impose sanctions upon counsel, including, but not limited to, finding the assigned counsel in contempt of court, imposing a fine, or denying any public funds as compensation for counsel's services. Both the prosecuting attorney and defense counsel shall have a right to present evidence and argument as to a reasonable length of time for preparation and on any reasons why counsel could not be prepared in the set time.

SECTION 26. Section 1049.5 is added to the Penal Code, to read:

1049.5. In felony cases, the court shall set a date for trial which is within 60 days of the defendant's arraignment in the superior court unless, upon a showing of good cause as prescribed in Section 1050, the court lengthens the time. If the court, after a hearing as prescribed in Section 1050, finds that there is good cause to set the date for trial beyond the 60 days, it shall state on the record the facts proved that justify its finding. A statement of facts proved shall be entered in the minutes.

SECTION 27. Section 1050.1 is added to the Penal Code, to read:

1050.1. In any case in which two or more defendants are jointly charged in the same complaint, indictment, or information, and the court or magistrate, for good cause shown, continues the arraignment, preliminary hearing, or trial of one or more defendants, the continuance shall, upon motion of the prosecuting attorney, constitute good cause to continue the remaining defendants' cases so as to maintain joinder. The court or magistrate shall not cause jointly charged cases to be severed due to the unavailability or unpreparedness of one or more defendants unless it appears to the court or magistrate that it will be impossible for all defendants to be available and prepared within a reasonable period of time.

SECTION 28. Chapter 10 (commencing with Section 1054) is added to Title 6 of Part 2 of the Penal Code, to read:

CHAPTER 10. DISCOVERY

1054. This chapter shall be interpreted to give effect to all of the following purposes:

(a) To promote the ascertainment of truth in trials by requiring timely pretrial discovery.

(b) To save court time by requiring that discovery be conducted informally between and among the parties before judicial enforcement is requested.

(c) To save court time in trial and avoid the necessity for frequent interruptions and postponements.

(d) To protect victims and witnesses from danger, harassment, and undue delay of the proceedings.

(e) To provide that no discovery shall occur in criminal cases except as provided by this chapter, other express statutory provisions, or as mandated by the Constitution of the United States.

1054.1. The prosecuting attorney shall disclose to the defendant or his or her attorney all of the following materials and information, if it is in the possession of the prosecuting attorney or if the prosecuting attorney knows it to be in the possession of the investigating agencies:

(a) The names and addresses of persons the prosecutor intends to call as witnesses at trial.

(b) Statements of all defendants.

(c) All relevant real evidence seized or obtained as a part of the investigation of the offenses charged.

(d) The existence of a felony conviction of any material witness whose credibility is likely to be critical to the outcome of the trial.

(e) Any exculpatory evidence.

(f) Relevant written or recorded statements of witnesses or reports of the statements of witnesses whom the prosecutor intends to call at the trial, including any reports or statements of experts made in conjunction with the case, including the results of physical or mental examinations, scientific tests, experiments, or comparisons which the prosecutor intends to offer in evidence at the trial.

1054.2. No attorney may disclose or permit to be disclosed to a defendant the address or telephone number of a victim or witness whose name is disclosed to the attorney pursuant to subdivision (a) of Section 1054.1 unless specifically permitted to do so by the court after a hearing and a showing of good cause.

1054.3. The defendant and his or her attorney shall disclose to the prosecuting attorney:

(a) The names and addresses of persons, other than the defendant, he or she intends to call as witnesses at trial, together with any relevant written or recorded statements of those persons, or, reports of the statements of those persons, including any reports or statements of experts made in connection with the case, including the results of physical or mental examinations, scientific tests, experiments, or comparisons which the defendant intends to offer in evidence at the trial.

(b) Any real evidence which the defendant intends to offer in evidence at the trial.

1054.4. Nothing in this chapter shall be construed as limiting any law enforcement or prosecuting agency from obtaining nontestimonial evidence to the extent permitted by law on the operative date of this section.

1054.5. (a) No order requiring discovery shall be made in criminal cases except as provided in this chapter. This chapter shall be the only means by which the defendant may compel the disclosure or production of information from prosecuting attorneys, law enforcement agencies which investigated or prepared the case against the defendant, or any other persons or agencies which the prosecuting attorney or investigating agency may have employed to assist them in performing their duties.

(b) Before a party may seek court enforcement of any of the disclosures required by this chapter, the party shall make an informal request of opposing counsel for the desired materials and information. If within 15 days, the opposing counsel fails to provide the materials and information requested, the party may seek a court order. Upon a showing that a party has not complied with Section 1054.1 or 1054.3 and upon a showing that the moving party complied with the informal discovery procedure provided in this subdivision, a court may make any order necessary to enforce the provisions of this chapter, including, but not limited to, immediate disclosure, contempt proceedings, delaying or prohibiting the testimony of a witness or the presentation of real evidence, continuance of the matter, or any other lawful order. Further, the court may advise the jury of any failure or refusal to disclose and of any untimely disclosure.

(c) The court may prohibit the testimony of a witness pursuant to subdivision (b) only if all other sanctions have been exhausted. The court shall not dismiss a charge pursuant to subdivision (b) unless required to do so by the Constitution of the United States.

1054.6. Neither the defendant nor the prosecuting attorney is required to disclose any materials or information which are work product as defined in subdivision (c) of Section 2018 of the Code of Civil Procedure, or which are privileged pursuant to an express statutory provision, or are privileged as provided by the Constitution of the United States.

1054.7. The disclosures required under this chapter shall be made at least 30 days prior to the trial, unless good cause is shown why a disclosure should be denied, restricted, or deferred. If the material and information becomes known to, or comes into the possession of, a party within 30 days of trial, disclosure shall be made immediately, unless good cause is shown why a disclosure should be denied, restricted, or deferred. "Good cause" is limited to threats or possible danger to the safety of a victim or witness, possible loss or destruction of evidence, or possible compromise of other investigations by law enforcement.

Upon the request of any party, the court may permit a showing of good cause for the denial or regulation of disclosures, or any portion of that showing, to be made in camera. A verbatim record shall be made of any such proceeding. If the court enters an order granting relief following a showing in camera, the entire record of the showing shall

be sealed and preserved in the [illegible] shall be made available to an appellate court in the event of an [illegible] discretion, the trial court may after trial and conviction, unseal [illegible] matter.

SECTION 29. Section 1382.1 [illegible] Code is repealed.

SECTION 30. Section 1202. [illegible] Code is repealed.

SECTION 31. Section 1385.1 [illegible] Penal Code, to read:

1385.1. Notwithstanding Section [illegible] other provision of law, a judge shall not strike or dismiss any special [illegible] that is admitted by a plea of guilty or nolo contendere or is found by a jury [illegible] as provided in Sections 190.1 to 190.5, inclusive.

SECTION 32. Section 1430 of the [illegible] Code is repealed.

SECTION 33. Section 1511 is added to the Penal Code, to read:

1511. If in a felony case the superior court sets the trial beyond the period of time specified in Section 1049.5, in violation of Section 1049.5, or continues the hearing of any matter without good cause, and good cause is required by law for such a continuance, either party may file a petition for writ of mandate or prohibition in the court of appeal seeking immediate appellate review of the ruling setting the trial or granting the continuance. Such a petition shall have precedence over all other cases in the court to which the petition is assigned, including, but not limited to, cases that originated in the juvenile court. If the court of appeal grants a peremptory writ, it shall issue the writ and a remittitur three court days after its decision becomes final as to that court if such action is necessary to prevent mootness or to prevent frustration of the relief granted, notwithstanding the right of the parties to file a petition for review in the Supreme Court. When the court of appeal issues the writ and remittitur as provided herein, the writ shall command the superior court to proceed with the criminal case without further delay, other than that reasonably necessary for the parties to obtain the attendance of their witnesses.

The Supreme Court may stay [illegible] the issuance of the writ and remittitur. The Supreme Court's failure to stay or [illegible] the issuance of the writ and remittitur shall not deprive the respondent or the real party in interest of its right to file a petition for review in the Supreme Court.

TITLE IV.

EMERGENCY CORRECTIONAL FACILITIES

SECTION 34. Chapter 17 (commencing with Section 7450) is added to Title 7 of

Part 3 of the Penal Code, to read:

Article 1. General Provisions

7450. As used in this chapter, the following terms have the following meanings:

(a) "Committee" means the Emergency Correctional Facility Finance Committee created pursuant to Section 7462.

(b) "Fund" means the Emergency Correctional Facility Bond Fund created pursuant to Section 7455.

(c) The primary purpose of the facilities authorized by this title shall be to house inmates with drug abuse problems in order to provide them with (1) a drug-free environment, and (2) drug treatment programs which shall also be integrated with parole and probation supervision programs.

(d) Cost efficiency of construction and operation and effectiveness of treatment shall be of paramount concern. Facilities authorized by this section shall be constructed within the limits of the appropriation except as authorized by the Joint Prison Construction and Operations Committee of the Legislature. The facilities shall be designed and constructed using an efficient and effective low-cost design.

Article 2. Emergency Correctional Facilities

7455. The proceeds of bonds issued and sold pursuant to this chapter shall be deposited in the Emergency Correctional Facility Bond Fund, which is hereby created.

7456. (a) Money in the fund, up to a limit of three hundred six million dollars ($306,000,000) may be available for the acquisition and construction of state correctional facilities. For that purpose, acquisition includes the purchase of property, the lease of property for a period of not less than 20 years, and any other acquisition of property that grants a right to occupy the property for at least 20 years, and construction includes the remodeling of existing facilities.

(b) Money in the fund, up to a limit of four hundred thirty-four million dollars ($434,000,000) shall be available for the acquisition and construction of local and regional confinement and treatment facilities for the housing of prisoners who might otherwise be housed in county jails.

Article 3. Fiscal Provisions

7460. Bonds in the total amount of seven hundred forty million dollars ($740,000,000), or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this chapter and to be used to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds shall, when sold, be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both principal of, and interest

on, the bonds as the principal [illegible] due and payable.

7461. The bonds authorized [illegible] shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720), Part 3, Division 4 of Title 2 of the Government Code), and all of the provisions of that law apply to the bonds and to this chapter and are hereby incorporated in this chapter as though set forth in full in this chapter.

7462. (a) Solely for the purpose of authorizing the issuance and sale, pursuant to the State General Obligation Bond Law, of the bonds authorized by this chapter, the Emergency Correctional Facility Finance Committee is hereby created. For purposes of this chapter, the Emergency Correctional Facility Finance Committee is "the committee" as that term is used in the State General Obligation Bond Law. The committee consists of the Controller, the Treasurer, the Director of Finance, the Director of Corrections, and the Chairperson of the Board of Corrections, or their designated representatives. A majority of the committee may act for the committee.

(b) For purposes of the State General Obligation Bond Law, the Department of Corrections is designated the "board."

7463. The committee shall determine whether it is necessary or desirable to issue bonds authorized pursuant to this chapter in order to carry out the actions specified in Section 7456 and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

7464. There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds each year, and it is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act which is necessary to collect that additional sum.

7465. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this chapter, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this chapter, as the principal and interest become due and payable.

(b) The sum which is necessary to carry out the provisions of Section 7466, appropriated without regard to fiscal years.

7466. For the purposes of carrying out this chapter, the Director of Finance may authorize the withdrawal from the General Fund of an amount or amounts not to exceed the amount of the unsold bonds which have been authorized by the committee to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the fund. Any money made available under this section shall be returned to the General Fund from money received from the sale of bonds for the purpose of carrying out this chapter.

7467. All money deposited in the fund which is derived from premium and accrued

interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

7468. The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code.

7469. The People hereby find and declare that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

SECTION 35. (a) The Department of Corrections is hereby authorized to construct and establish confinement and treatment facilities totalling 8,000 beds, together with necessary service facilities.

(b) The facilities authorized by this section shall be used for the confinement and treatment of inmates committed to the Department of Corrections.

(c) Preference for construction shall be given to a site on federal property in the Mojave Desert.

(d) The department may acquire property for the purposes of this section by purchase, by lease with a term of at least 20 years, or by any similar arrangement that provides the department with the right to occupy the property for at least 20 years. Construction may include the adaptation of existing facilities.

(e) Any contract or subcontract for the construction of facilities authorized by this section shall provide for payment of wages to all workers no less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed, and no less than the general prevailing rate of per diem wages for holiday and overtime work.

SECTION 36. (a) The Department of Corrections is authorized to construct and establish confinement and treatment facilities to house prisoners who might otherwise be housed in county jails. These facilities shall be operated by counties, as authorized by law. Counties may contract with the Department of Corrections to operate all or any portion of these facilities.

(b) Facilities with a total capacity of 6,000 beds shall be located in southern California. For that purpose, "southern California" means the Counties of Santa Barbara, Kern, and San Bernardino, and the more southerly counties.

(c) Other facilities, having a capacity of 4,000 beds, shall be located in northern California in the vicinity of the counties bordering the San Francisco Bay.

(d) Sections 6029 and 6030 of the Penal Code shall not apply to facilities constructed under this section.

(e) Any contract or subcontract for the construction of facilities authorized by this section shall provide for payment of wages to all workers no less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed, and no less than the general prevailing rate of per diem wages for holiday and overtime work.

SECTION 37. The sum of seven hundred forty million dollars ($740,000,000) is hereby appropriated from the Emergency Correctional Facility Bond Fund for use as follows:

(a) The sum of three hundred six million dollars ($306,000,000) is appropriated to the Department of Corrections for the facilities authorized by Section 35.

(b) (1) The sum of two hundred sixty-four million dollars ($264,000,000) is appropriated to the Department of Corrections for the joint use jail facilities in southern California authorized by Section 36.

(2) The sum of one hundred seventy million dollars ($170,000,000) is appropriated to the Department of Corrections for the joint use jail facilities in northern California authorized by Section 36.

(c) Funds appropriated by this section shall be available for purposes, as necessary, of site acquisition, site studies and suitability reports, environmental studies, master planning, architectural programming, schematics, preliminary plans, working drawings, construction, and long-lead and equipment items. For that purpose, site acquisition includes the payment for the right to occupy the property for at least 20 years.

TITLE V.
FUNDING

SECTION 38. Section 17008.5 is added to the Revenue and Taxation Code, to read:

17008.5. (a) The provisions of Section 7704 of the Internal Revenue Code, relating to certain publicly traded partnerships treated as corporations, shall apply to taxable years beginning on or after January 1, 1991, except that Section 10211(c)(2) of Public Law 100-203 shall apply.

(b) The amendments to Section 7704 of the Internal Revenue Code made by Section 2004 of Public Law 100-647, relating to certain publicly traded partnerships treated as corporations, shall apply to taxable years beginning on or after January 1, 1991.

SECTION 39. Section 17062 of the Revenue and Taxation Code is amended to read:

17062. (a) In addition to the other taxes imposed by this part, there is hereby imposed for each taxable year, a tax equal to the excess, if any, of

(1) The tentative minimum tax for the taxable year, over

(2) The regular tax for the taxable year.

(b) For purposes of this chapter, each of the following shall apply:

(1) The tentative minimum tax shall be computed in accordance with Sections 55 to 59, inclusive, of the Internal Revenue Code, except as otherwise provided in this part.

(2) The regular tax shall be the amount of tax imposed by Section 17041 or

17048, reduced by credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(3) (A) The provisions of Section 55(b)(1) of the Internal Revenue Code shall be modified to provide that the tentative minimum tax for the taxable year shall be equal to 7 percent of so much of the alternative minimum taxable income for the taxable year as exceeds the exemption amount, reduced by the alternative credit for taxes paid to other states as allowed by Chapter 12 (commencing with Section 18001).

(B) In the case of a nonresident or part-year resident, the tentative minimum tax shall be computed as if the nonresident or part-year resident were a resident for the entire year multiplied by the ratio of California adjusted gross income (as modified for purposes of this chapter) to total adjusted gross income from all sources (as modified for purposes of this chapter). For purposes of computing the tax under subparagraph (A) and gross income from all sources, the net operating loss deduction provided in Section 56(d) of the Internal Revenue Code shall be computed as if the taxpayer were a resident for all prior years.

(C) For purposes of this section, the term "California adjusted gross income" includes each of the following:

(i) For any period during which the taxpayer was a resident of this state (as defined by Section 17014), all items of adjusted gross income (as modified for purposes of this chapter), regardless of source.

(ii) For any period during which the taxpayer was not a resident of this state, only those items of adjusted gross income (as modified for purposes of this chapter) which were derived from sources within this state, determined in accordance with Chapter 11 (commencing with Section 17951).

(4) (A) If there was a deferral of preference tax under former Section 17064.8 for any taxable year beginning before January 1, 1987, and the amount of the deferred tax has not been paid for any taxable year beginning before January 1, 1987, the amount of the net operating loss carryovers which may be carried to taxable years beginning after December 31, 1986, for purposes of this chapter, shall be reduced by the amount of the tax preferences attributable to the deferred tax which has not been paid.

(B) In the case of a net operating loss allowed to be carried forward under subdivision (d) of Section 17276, subparagraph (A) shall apply to the extent that such a loss would have resulted in a deferred tax under prior law.

(5) The provisions of Section 57(a)(5) of the Internal Revenue Code, relating to tax-exempt interest shall not be applicable.

(6) The provisions of Section 59(a) of the Internal Revenue Code, relating to the alternative minimum tax foreign tax credit, shall not be applicable.

(7) Section 56(b)(1)(E) of the Internal Revenue Code, relating to standard deduction and deduction for personal exemptions not allowed, is modified, for purposes of this part, to deny the standard deduction allowed by Section 17073.5.

SECTION 40. Section 17094 of the Revenue and Taxation Code is repealed.

SECTION 41. Section 17279 of the Revenue and Taxation Code is repealed.

SECTION 42. Section 17560 of the Revenue and Taxation Code is amended to read:

17560. (a) At the election of the taxpayer, the provisions of Section 453C of the Internal Revenue Code, relating to certain indebtedness treated as payment on installment obligations, shall not be applicable.

(b) (1) If an election is not made under subdivision (a), then for purposes of applying the provisions of Section 453C of the Internal Revenue Code, relating to certain indebtedness treated as a payment on installment obligations, the provisions of Sections 811(c)(2), 811(c)(4), 811(c)(6), and 811(c)(7) of Public Law 99-514, as modified by Section 1008(f) of Public Law 100-647, shall apply.

(2) The provisions of Section 812 of Public Law 99-514, relating to the disallowance of use of installment method for certain obligations as modified by Section 1008(g) of Public Law 100-647, shall apply to taxable years beginning on or after January 1, 1987.

(c) The repeal of Section 453C of the Internal Revenue Code by Section 10202(a) of Public Law 100-203, relating to repeal of the proportionate disallowance of the installment method, shall apply to dispositions in taxable years beginning on or after January 1, 1991.

(d) (1) The amendments to Section 453 of the Internal Revenue Code by Section 2004 of Public Law 100-647, relating to the installment method, shall apply to taxable years beginning on or after January 1, 1991.

(2) In the case of any installment obligation to which Section 453(l)(2)(B) of the Internal Revenue Code applies, in lieu of the provisions of Section 453(l)(3)(A) of the Internal Revenue Code, the tax imposed under Section 17041 or 17048 for any taxable year for which payment is received on that obligation shall be increased by the amount of interest determined in the manner provided under Section 453(l)(3)(B) of the Internal Revenue Code.

(3) The provisions of Section 10202(e)(2) and 10204(b)(2)(B) of Public Law 100-203, relating to change in method of accounting, are modified to provide that any adjustments required by Section 481 of the Internal Revenue Code shall be included in gross income as follows:

(A) Fifty percent in the first taxable year beginning on or after January 1, 1991.

(B) Fifty percent in the second taxable year beginning on or after January 1, 1991.

(e) (1) The amendments to Section 453A of the Internal Revenue Code made by Section 2004 of Public Law 100-647, relating to special rules for nondealers, shall apply to taxable years beginning on or after January 1, 1991.

(2) In the case of any installment obligation to which Section 453A of the Internal Revenue Code applies and which is outstanding as of the close of the taxable year, in lieu of the provisions of Section 453A(c)(1) of the Internal Revenue Code, the tax imposed under Section 17041 or 17048 for the taxable year shall be increased by the amount of

interest determined in the manner provided under Section 453A(c)(2) of the Internal Revenue Code.

(3) The provisions of Section 453A(c)(3)(B) of the Internal Revenue Code, relating to the maximum rate used in calculating the deferred tax liability, are modified to refer to the maximum rate of tax imposed under Section 17041 in lieu of the maximum rate of tax imposed under Section 1 or 11 of the Internal Revenue Code.

SECTION 43. Section 17561 of the Revenue and Taxation Code is amended to read:

17561. (a) For purposes of this part, the provisions of Section 469(d)(2) of the Internal Revenue Code, relating to passive activity credits, are modified to refer to the following credits:

(1) The credit for research expenses allowed by Section 17052.12.

(2) The credit for certain wages paid (targeted jobs) allowed by Section 17053.7.

(3) The credit for clinical testing expenses allowed by Section 17057.

(4) The credit for low-income housing allowed by Section 17058.

(b) For purposes of applying the provisions of Section 469(i) of the Internal Revenue Code, relating to the twenty-five thousand dollars ($25,000) offset for rental real estate activities:

(1) The dollar limitation for the credit allowed under Section 17058 (relating to low-income housing) shall be equal to seventy-five thousand dollars ($75,000) in lieu of the amount specified in Section 469(i)(2) of the Internal Revenue Code.

(2) The term "adjusted gross income," as defined in Section 469(i)(3)(D), shall mean the amount required to be shown as adjusted gross income on the federal tax return for the same taxable year determined without regard to --

(A) Any amount includible in gross income on the federal tax return under Section 86 of the Internal Revenue Code.

(B) Any amount allowed as a deduction on the federal tax return under Section 219 of the Internal Revenue Code.

(C) Any passive activity loss.

(c) Section 502 of the Tax Reform Act of 1986 (Public Law 99-514) shall apply.

(d) For taxable years beginning on or after January 1, 1987, the provisions of Section 10212 of Public Law 100-203, relating to treatment of publicly traded partnerships under Section 469 of the Internal Revenue Code, shall be applicable.

(e) The amendments to Section 469(k) of the Internal Revenue Code made by Section 2004 of Public Law 100-647, relating to separate application of Section 469 in case of publicly traded partnerships, shall apply to taxable years beginning on or after January 1, 1991.

SECTION 44. Section 17563 of the Revenue and Taxation Code is amended to read:

17563. (a) In the case of any taxpayer who elected to have Section 463 of the Internal Revenue Code of 1986 apply for that taxpayer's last taxable year beginning prior to January 1, 1991, and who is required to change his or her method of accounting by reason of the amendments made by the act adding this provision, each of the following shall apply:

(1) The change shall be treated as initiated by the taxpayer.

(2) The change shall be treated as having been made with the consent of the Franchise Tax Board.

(3) The net amount of adjustments required by Chapter 6 (commencing with Section 17551) to be taken into account by the taxpayer:

(A) Shall be reduced by the balance in the suspense account, under Section 463(c) of the Internal Revenue Code as of the close of the last taxable year beginning before January 1, 1991, and

(B) Shall be taken into account over the two taxable year period beginning with the taxable year following that last taxable year, as follows:

In the case of the:	The percentage to be taken into account is:
1st Year	50
2nd Year	50

(b) Notwithstanding subparagraph (B) of paragraph (3) of subdivision (a), if the period during which the adjustments are required to be taken into account under Chapter 6 (commencing with Section 17551) is less than two years, those adjustments shall be taken into account ratably over the shorter period.

SECTION 45. Section 17564 of the Revenue and Taxation Code is amended to read:

17564. (a) Long-term contracts shall be accounted for in accordance with the special rules set forth in Section 460 of the Internal Revenue Code.

(b) (1) The provisions of Section 804(d) of Public Law 99-514, relating to the effective date of modifications in the method of accounting for long-term contracts, shall be applicable to taxable years beginning on or after January 1, 1987.

(2) In the case of a contract entered into after February 28, 1986, during a taxable year beginning before January 1, 1987, an adjustment to income shall be made upon completion of the contract, if necessary, to correct any underreporting or overreporting of income, for purposes of this part, resulting from differences between state and federal law for the taxable year in which the contract began.

(c) In the case of a contract entered into after October 13, 1987, during a taxable year beginning before January 1, 1991, an adjustment to income shall be made upon completion of the contract, if necessary, to correct any underreporting or overreporting of income, for purposes of this part, resulting from differences between state and federal law for taxable years beginning prior to January 1, 1991.

(d) In the case of a contract entered into after June 20, 1988, during a taxable

year beginning before January 1, 1991, an adjustment to income shall be made upon completion of the contract, if necessary, to correct any underreporting or overreporting of income, for purposes of this part, resulting from differences between state and federal law for taxable years beginning prior to January 1, 1991.

(e) For purposes of applying Section 460(a)(2) of the Internal Revenue Code, relating to 90 percent look-back method, any adjustment to income computed under subdivision (b), (c), or (d) shall be deemed to have been reported in the taxable year from which the adjustment arose, rather than the taxable year in which the contract was completed.

SECTION 46. Section 23038.5 is added to the Revenue and Taxation Code, to read:

23038.5. (a) The provisions of Section 7704 of the Internal Revenue Code, relating to certain publicly traded partnerships treated as corporations, shall apply to income years beginning on or after January 1, 1991, except that Section 10211(c)(2) of Public Law 100-203 shall apply.

(b) The amendments to Section 7704 of the Internal Revenue Code made by Section 2004 of Public Law 100-647, relating to certain publicly traded partnerships treated as corporations, shall apply to income years beginning on or after January 1, 1991.

SECTION 47. Section 23456 of the Revenue and Taxation Code is amended to read:

23456. For purposes of this part, Section 56 of the Internal Revenue Code is modified as follows:

(a) (1) Section 56(a)(2) of the Internal Revenue Code, relating to mining exploration and development costs, shall apply only to expenses incurred during income years beginning on or after January 1, 1988.

(2) Section 56(a)(5) of the Internal Revenue Code, relating to pollution control facilities, shall apply only to amounts allowable as a deduction under Section 24372.3.

(b) Section 56(c)(2) of the Internal Revenue Code, relating to Merchant Marine Capital Construction Funds, shall not be applicable.

(c) (1) For purposes of applying Section 56(d) of the Internal Revenue Code, all references to "December 31, 1986," are modified to read "December 31, 1987," and all references to "January 1, 1987," are modified to read "January 1, 1988."

(2) (A) If there was a deferral of preference tax under former Section 23405 for any income year beginning before January 1, 1988, and the amount of the deferred tax has not been paid for any income year beginning before January 1, 1988, the amount of the net operating loss carryovers which may be carried to income years beginning after December 31, 1987, for purposes of this chapter, shall be reduced by the amount of the tax preferences attributable to the deferred tax which has not been paid.

(B) In the case of a net operating loss allowed to be carried forward under

subdivision (e) of Section 24416, subparagraph (A) shall apply to the extent that such a loss would have resulted in a deferred tax under prior law.

(d) (1) Section 56(f)(2)(B) of the Internal Revenue Code, relating to adjustments for certain taxes, is modified to read: The amount determined under subparagraph (A) shall be appropriately adjusted to disregard any tax on or measured by income.

(2) The last sentence of Section 56(f)(2)(B) of the Internal Revenue Code, relating to taxes imposed by a foreign country or possession, shall not be applicable.

(3) Section 56(f)(2)(C)(i) of the Internal Revenue Code, relating to consolidated returns, is modified to substitute "combined report" for "consolidated return."

(4) Section 56(f)(2)(C)(ii) of the Internal Revenue Code, relating to treatment of dividends of related corporations, is modified to read: Adjusted net book income shall take into account only those dividends (or portions thereof) which have been included in net income for purposes of determining the regular tax.

(5) Section 56(f)(2)(F) of the Internal Revenue Code, relating to treatment of dividends from 936 corporations, shall not be applicable.

(6) Section 56(f)(2)(G) of the Internal Revenue Code, relating to rules for Alaska native corporations, shall not be applicable.

(7) With respect to corporations which are not subject to the tax imposed under Chapter 2 (commencing with Section 23101), the amount of interest income included in book income shall not exceed the amount of interest income included for purposes of the regular tax.

(8) Appropriate adjustments shall be made to limit deductions from book income for interest expense in accordance with Sections 24344 and 24425.

(e) Section 56(g)(4)(A) of the Internal Revenue Code is modified to provide that in the case of any property placed in service on or after January 1, 1981, and prior to January 1, 1987, and not described in clause (i), (ii), or (iii) of Section 56(g)(4)(A) of the Internal Revenue Code, the amount allowable as depreciation or amortization with respect to that property shall be the same amount that would have been allowable for the income year had the taxpayer depreciated the property under the straight-line method for each income year of the useful life (determined without regard to Section 24354.2 or 24381) for which the taxpayer has held the property.

(f) (1) Section 56(g)(4)(C) of the Internal Revenue Code, relating to disallowance of items not deductible in computing earnings and profits, shall be modified as follows:

(A) A deduction shall be allowed for amounts allowable as a deduction for purposes of the regular tax under Sections 24402, 24410, 24411, and 25106.

(B) Section 56(g)(4)(C)(ii) of the Internal Revenue Code, relating to special rule for 100 percent dividends, shall not be applicable.

(C) Section 56(g)(4)(C)(iii) of the Internal Revenue Code, relating to special rule for dividends from Section 936 companies, shall not be applicable.

(2) With respect to corporations which are not subject to the tax imposed under Chapter 2 (commencing with Section 23101), the amount of interest income included in the adjusted current earnings shall not exceed the amount of interest income included for purposes of the regular tax.

(3) Appropriate adjustments shall be made to limit deductions from adjusted current earnings for interest expense in accordance with Sections 24344 and 24425.

SECTION 48. Section 23732 of the Revenue and Taxation Code is amended to read:

23732. The provisions of Section 512 of the Internal Revenue Code, relating to unrelated business taxable income, shall apply, except as otherwise provided.

(a) Section 512(a)(2) of the Internal Revenue Code, relating to special rules for foreign organizations, shall not be applicable.

(b) Section 512(a)(3) of the Internal Revenue Code, relating to special rules applicable to certain organizations, shall be modified as follows:

(1) The reference to Section 501(c)(7) of the Internal Revenue Code, relating to clubs organized for pleasure, recreation, and other nonprofitable purposes, shall be modified to refer to Section 23701g.

(2) The reference to Section 501(c)(9) of the Internal Revenue Code, relating to voluntary employees' beneficiary associations, shall be modified to refer to Section 23701i.

(3) The reference to Section 501(c)(17) of the Internal Revenue Code, relating to trusts providing for payment of supplemental unemployment compensation benefits, shall be modified to refer to Section 23701n.

(4) The reference to Section 501(c)(20) of the Internal Revenue Code, relating to qualified group legal services plans, shall be modified to refer to Section 23701q.

(c) Section 512(b)(10) of the Internal Revenue Code, relating to charitable contributions, shall be modified to provide that such deductions shall not exceed 5 percent of the unrelated business taxable income, rather than 10 percent.

SECTION 49. Section 23735 of the Revenue and Taxation Code is amended to read:

23735. (a) The provisions of Section 514 of the Internal Revenue Code, relating to unrelated debt-financed income, shall apply, except as otherwise provided.

(b) The provisions of Section 10214 of Public Law 100-203, relating to the treatment of certain partnership allocations, shall apply to income years beginning on or after January 1, 1991, for property acquired by the partnership after October 13, 1987, and partnership interests acquired after October 13, 1987.

SECTION 50. Section 23802 of the Revenue and Taxation Code is amended to read:

23802. (a) Section 1363(a) of the Internal Revenue Code, relating to the taxability of an S corporation, shall not be applicable.

(b) Corporations qualifying under this chapter shall continue to be subject to the taxes imposed under Chapter 2 (commencing with Section 23101) and Chapter 3

(commencing with Section 23501), except as follows:

(1) The tax imposed under Section 23151 or 23501 shall be imposed at a rate of 2½ percent rather than the rate specified in those sections.

(2) In the case of an "S corporation" which is also a financial corporation, the rate of tax specified in paragraph (1) shall be increased by the excess of the rate imposed under Section 23183 over the rate imposed under Section 23151 and Section 23184 shall be applicable.

(3) An "S corporation" shall not be subject to the alternative minimum tax (or preference tax) imposed under Section 23400.

(c) An "S corporation" shall be subject to the minimum tax imposed under Section 23153.

(d) (1) For purposes of subdivision (b), an "S corporation" shall be allowed a deduction under Section 24416 (relating to net operating loss deductions), but only with respect to losses incurred during periods in which the corporation had in effect a valid election to be treated as an "S corporation" for purposes of this part.

(2) Section 1371(b) of the Internal Revenue Code, relating to denial of carryovers between "C years" and "S years", shall apply for purposes of the tax imposed under subdivision (b), except as provided in paragraph (1) of this subdivision.

(3) The provisions of this subdivision shall not affect the amount of any item of income or loss computed in accordance with the provisions of Section 1366 of the Internal Revenue Code, relating to pass-thru items to shareholders.

(4) For purposes of subdivision (b) of Section 17276, relating to limitations on loss carryovers, losses passed through to shareholders of an "S corporation," to the extent otherwise allowable without application of that subdivision, shall be fully included in the net operating loss of that shareholder and then that subdivision shall be applied to the entire net operating loss.

(e) For purposes of computing the taxes specified in subdivision (b), an "S corporation" shall be allowed a deduction from income for built-in gains and passive investment income for which a tax has been imposed under this part in accordance with the provisions of Section 1374 of the Internal Revenue Code, relating to tax imposed on certain built-in gains, or Section 1375 of the Internal Revenue Code, relating to tax imposed on passive investment income.

(f) For purposes of computing taxes imposed under this part, as provided in subdivision (b) --

(1) An "S corporation" shall compute its deductions for amortization and depreciation in accordance with the provisions of Part 10 (commencing with Section 17001) of Division 2.

(2) The provisions of Section 465 of the Internal Revenue Code, relating to limitation of deductions to the amount at risk, shall be applied in the same manner as in the case of an individual.

(3) (A) The provisions of Section 469 of the Internal Revenue Code, relating to limitations on passive activity losses and credits, shall be applied in the same manner as in the case of an individual.

(B) For purposes of this paragraph, the 'adjusted gross income' of the 'S corporation" shall be equal to its "net income," as determined under Section 24341 with the modifications required by this subdivision.

(g) The amendments to Section 1363 of the Internal Revenue Code made by Section 2004 of Public Law 100-647, relating to effect of election on corporation, shall apply to income years beginning on or after January 1, 1991.

(h) The provisions of Section 1363(d) of the Internal Revenue Code, relating to recapture of LIFO benefits, shall be modified for purposes of this part to refer to Section 25901a in lieu of Section 6601 of the Internal Revenue Code.

SECTION 51. Section 24274 of the Revenue and Taxation Code is repealed.

SECTION 52. Section 24402 of the Revenue and Taxation Code is amended to read:

24402. (a) A portion of the dividends received during the income year declared from income which has been included in the measure of the taxes imposed under Chapter 2 (commencing with Section 23101), Chapter 2.5 (commencing with Section 23400), or Chapter 3 (commencing with Section 23501) upon the taxpayer declaring the dividends.

(b) The portion of dividends which may be deducted under this section shall be as follows:

(1) In the case of any dividend described in subdivision (a), received from a "more than 50 percent owned corporation," 100 percent.

(2) In the case of any dividend described in subdivision (a), received from a "20 percent owned corporation," 80 percent.

(3) In the case of any dividend described in subdivision (a), received from a bank or corporation which is less than 20 percent owned, 70 percent.

(c) For purposes of this section:

(1) The term "more than 50 percent owned corporation" means any bank or corporation if more than 50 percent of the stock of that bank or corporation (by vote and value) is owned by the taxpayer. For purposes of the preceding sentence, stock described in Section 1504(a)(4) of the Internal Revenue Code shall not be taken into account.

(2) The term "20 percent owned corporation" means any bank or corporation if 20 percent or more of the stock of that bank or corporation (by vote and value) is owned by the taxpayer. For purposes of the preceding sentence, stock described in Section 1504(a)(4) of the Internal Revenue Code shall not be taken into account.

SECTION 53. Section 24422.3 of the Revenue and Taxation Code is amended to read:

24422.3. Capitalization and inclusion in inventory costs of certain expenses shall be determined in accordance with Section 263A of the Internal Revenue Code.

SECTION 54. Section 24457 of the Revenue and Taxation Code is amended to read:

24457. (a) Section 304 of the Internal Revenue Code, relating to redemption through the use of related corporations, shall be applicable, except as otherwise provided.

(b) For purposes of applying the provisions of Section 304(b)(4) of the Internal Revenue Code, the term "affiliated group" means a controlled group within the meaning of Section 24564.

SECTION 55. Section 24533 of the Revenue and Taxation Code is amended to read:

24533. (a) Section 24532 shall apply only if either –

(1) The distributing corporation, and the controlled corporation (or, if stock of more than one controlled corporation is distributed, each of such corporations) is engaged immediately after the distribution in the active conduct of a trade or business; or

(2) Immediately before the distribution, the distributing corporation had no assets other than stock or securities in the controlled corporations and each of the controlled corporations is engaged immediately after the distribution in the active conduct of a trade or business.

(b) For purposes of subsection (a), a corporation shall be treated as engaged in the active conduct of a trade or business if and only if –

(1) It is engaged in the active conduct of a trade or business, or substantially all of its assets consist of stock and securities of a corporation controlled by it (immediately after the distribution) which is so engaged;

(2) Such trade or business has been actively conducted throughout the five-year period ending on the date of the distribution;

(3) Such trade or business was not acquired within the period described in paragraph (2) in a transaction in which gain or loss was recognized in whole or in part; and

(4) Control of a corporation which (at the time of acquisition of control) was conducting such trade or business –

(A) Was not acquired by any distributee corporation directly (or through one or more corporations, whether through the distributing corporation or otherwise) within the period described in paragraph (2) and was not acquired by the distributing corporation directly (or through one or more corporations) within that period, or

(B) Was so acquired by any such corporation within that period, but, in each case in which such control was so acquired, it was so acquired, only by reason of transactions in which gain or loss was not recognized in whole or in part, or only by reason of such transactions combined with acquisitions before the beginning of that period.

(C) For purposes of this paragraph, all distributee corporations which are members of a controlled group (within the meaning of Section 24564) shall be treated as

one distributee corporation.

(c) For income years beginning on or after January 1, 1991, Section 311 of the Internal Revenue Code (as incorporated by Section 24481) shall apply to any distribution:

(1) To which this section (or so much of Sections 24535 to 24539, inclusive, as relates to this section) applies, and

(2) Which is not in pursuance of a plan of reorganization, in the same manner as if the distribution were a distribution to which Chapter 2 (commencing with Section 23101) or Chapter 2.5 (commencing with Section 23400) applies, except that Section 311(b) of the Internal Revenue Code shall not apply to any distribution of stock or securities in the controlled corporation.

(d) (1) Except as provided in paragraph (2), the amendments to this section by the act adding this subdivision shall apply to income years beginning on or after January 1, 1991, for distributions or transfers after December 15, 1987.

(2) The amendments to this section by the act adding this subdivision shall not apply to any distribution after December 15, 1987, and before January 1, 1993, if:

(A) Eighty percent or more of the stock of the distributing corporation was acquired by the distributee before December 15, 1987, or

(B) Eighty percent or more of the stock of the distributing corporation was acquired by the distributee before January 1, 1991, pursuant to a binding written contract or tender offer in effect on December 15, 1987.

For purposes of the preceding sentence, stock described in Section 1504(a)(4) of the Internal Revenue Code shall not be taken into account.

(3)(A) For purposes of paragraph (2), all corporations which were in existence on the designated date and were members of the same controlled group (as defined in Section 24564) which included the distributees on that date shall be treated as one distributee.

(B) Subparagraph (A) shall not exempt any distribution from the amendments made to this section by the act adding this subdivision if that distribution is with respect to stock not held by the distributee (determined without regard to subparagraph (A)) on the designated date directly or indirectly through a corporation which goes out of existence in the transaction.

(C) For purposes of this paragraph, the term "designated date" means the later of:

(i) December 15, 1987, or

(ii) The date on which the acquisition meeting the requirements of paragraph (2) occurred.

SECTION 56. Section 24601 of the Revenue and Taxation Code is amended to read:

24601. The provisions of Sections 404, 404A, 406, 407, 419, and 419A of the Internal Revenue Code shall apply, except as otherwise provided.

SECTION 57. Section 24652 of the Revenue and Taxation Code is amended to read:

24652. The method of accounting for corporations engaged in farming shall be determined in accordance with Section 447 of the Internal Revenue Code.

SECTION 58. Section 24667 of the Revenue and Taxation Code is amended to read:

24667. (a) (1) Installment sales shall be treated in accordance with Sections 453, 453A, 453B, and 453C of the Internal Revenue Code, except as otherwise provided.

(2) For purposes of applying the provisions of Section 453C of the Internal Revenue Code, relating to certain indebtedness treated as payment on installment obligations, the provisions of Sections 811(c)(2), 811(c)(4), 811(c)(6), and 811(c)(7) of Public Law 99-514, as modified by Section 1008(f) of Public Law 100-647, shall apply to income years beginning on or after January 1, 1988.

(3) The provisions of Section 812 of Public Law 99-514, relating to the disallowance of use of the installment method for certain obligations, as modified by Section 1008(g) of Public Law 100-647, shall apply to income years beginning on or after January 1, 1988.

(b) For purposes of subdivision (a), any references in the Internal Revenue Code to sections that have not been incorporated into this part by reference shall be deemed to refer to the corresponding section, if any, of this part.

(c) In the case of any taxpayer who made sales under a revolving credit plan and was on the installment method under former Section 24667 or 24668 for the taxpayer's last income year beginning before January 1, 1988, the provisions of this section shall be treated as a change in method of accounting for its first income year beginning after December 31, 1987, and all of the following shall apply:

(1) That change shall be treated as initiated by the taxpayer.

(2) That change shall be treated as having been made with the consent of the Franchise Tax Board.

(3) The period for taking into account adjustments under Article 6 (commencing with Section 24721) by reason of that change shall not exceed four years.

(d) The repeal of Section 453C of the Internal Revenue Code by Section 10202(a) of Public Law 100-203, relating to repeal of the proportionate disallowance of the installment method, shall apply to dispositions on or after January 1, 1991.

(e) (1) The amendments to Section 453 of the Internal Revenue Code by Section 2004 of Public Law 100-647, relating to the installment method, shall apply to income years beginning on or after January 1, 1991.

(2) In the case of any installment obligation to which Section 453(l)(2)(B) of the Internal Revenue Code applies, in lieu of the provisions of Section 453(l)(3)(A) of the Internal Revenue Code, the "tax" (as defined by subdivision (a) of Section 23036) for any income year for which payment is received on that obligation shall be increased by the

amount of interest determined in the manner provided under Section 453(l)(3)(B) of the Internal Revenue Code.

(3) The provisions of Section 10202(e)(2) and 10204(b)(2)(B) of Public Law 100-203, relating to change in method of accounting, are modified to provide that any adjustments required by Section 481 of the Internal Revenue Code shall be included in gross income as follows:

(A) Fifty percent in the first income year beginning on or after January 1, 1991.

(B) Fifty percent in the second income year beginning on or after January 1, 1991.

(f) (1) The amendments to Section 453A of the Internal Revenue Code made by Section 2004 of Public Law 100-647, relating to special rules for nondealers, shall apply to income years beginning on or after January 1, 1991.

(2) In the case of any installment obligation to which Section 453A of the Internal Revenue Code applies and which is outstanding as of the close of the income year, in lieu of the provisions of Section 453A(c)(1) of the Internal Revenue Code, the "tax" (as defined by subdivision (a) of Section 23036) for the income year shall be increased by the amount of interest determined in the manner provided under Section 453A(c)(2) of the Internal Revenue Code.

(3) The provisions of Section 453A(c)(3)(B) of the Internal Revenue Code, relating to the maximum rate used in calculating the deferred tax liability, are modified to refer to the maximum rate of tax imposed under Section 23151, 23186, or 23802, whichever applies, in lieu of the maximum rate of tax imposed under Section 11 of the Internal Revenue Code.

SECTION 59. Section 24673.2 of the Revenue and Taxation Code is amended to read:

24673.2. (a) Long-term contracts shall be accounted for in accordance with the special rules set forth in Section 460 of the Internal Revenue Code.

(b) (1) The provisions of Section 804(d) of Public Law 99-514, relating to the effective date of modifications in the method of accounting for long-term contracts, shall be applicable to income years beginning on or after January 1, 1987.

(2) In the case of a contract entered into after February 28, 1986, during an income year beginning before January 1, 1987, an adjustment to income shall be made upon completion of the contract, if necessary, to correct any underreporting or over reporting of income, for purposes of this part, resulting from differences between state and federal law for the income year in which the contract began.

(c) In the case of a contract entered into after October 13, 1987, during an income year beginning before January 1, 1991, an adjustment to income shall be made upon completion of the contract, if necessary, to correct any underreporting or overreporting of income for purposes of this part, resulting from differences between state and federal law for taxable years beginning prior to January 1, 1991.

(d) In the case of a contract entered into after June 20, 1988, during an income

year beginning before January 1, 1991, an adjustment to income shall be made upon completion of the contract, if necessary, to correct any underreporting or overreporting of income, for purposes of this part, resulting from differences between state and federal law for taxable years beginning prior to January 1, 1991.

(e) For purposes of applying Section 460(a)(2) of the Internal Revenue Code, relating to 90 percent look-back method, any adjustment to income computed under subdivision (b), (c), or (d) shall be deemed to have been reported in the income year from which the adjustment arose, rather than the income year in which the contract was completed.

SECTION 60. Section 24681 of the Revenue and Taxation Code is amended to read:

24681. The provisions of Section 461 of the Internal Revenue Code, relating to the general rule for taxable year of deduction, shall be applicable, except as otherwise provided.

SECTION 61. Section 24685 of the Revenue and Taxation Code is repealed.

SECTION 62. Section 24685 is added to the Revenue and Taxation Code, to read:

24685. (a) In the case of any taxpayer who elected to have former Section 24685 apply to its last income year beginning prior to January 1, 1991, and who is required to change its method of accounting by reason of the amendments made by the act adding this section, each of the following shall apply:

(1) The change shall be treated as initiated by the taxpayer,

(2) The change shall be treated as having been made with the consent of the Franchise Tax Board, and

(3) The net amount of adjustments required by Article 6 (commencing with Section 24721) to be taken into account by the taxpayer:

(A) Shall be reduced by the balance in the suspense account under subdivision (c) of former Section 24685 as of the close of the last income year beginning before January 1, 1991, and

(B) Shall be taken into account over the two income year period beginning with the income year following that last income year, as follows:

In the case of the:	The percentage to be taken into account is:
1st Year	50
2nd Year	50

(b) Notwithstanding subparagraph (B) of paragraph (3) of subdivision (a), if the period during which the adjustments are required to be taken into account under Article 6 (commencing with Section 24271) is less than two years, those adjustments shall be

taken into account ratably over the shorter period.

SECTION 63. Section 24692 of the Revenue and Taxation Code is amended to read:

24692. (a) The treatment of passive activity losses and credits shall be determined in accordance with Section 469 of the Internal Revenue Code, except as otherwise provided.

(b) For purposes of this part, the provisions of Section 469(d)(2) of the Internal Revenue Code, relating to passive activity credits, are modified to refer to the following credits: (1) The credit for research expenses allowed by Section 23609.

(2) The credit for clinical testing expenses allowed by Section 23609.5.

(3) The credit for low-income housing allowed by Section 23610.5.

(4) The credit for certain wages paid (targeted jobs) allowed by Section 23621.

(c) For purposes of applying the provisions of Section 469(i) of the Internal Revenue Code, relating to the twenty-five thousand dollars ($25,000) offset for rental real estate activities, the dollar limitation for the credit allowed under Section 23610.5 (relating to low-income housing) shall be equal to seventy-five thousand dollars ($75,000) in lieu of the amount specified in Section 469(i)(2) of the Internal Revenue Code.

(d) Section 502 of the Tax Reform Act of 1986 (Public Law 99-514) shall apply.

(e) For income years beginning on or after January 1, 1987, the provisions of Section 10212 of Public Law 100-203, relating to treatment of publicly traded partnerships under Section 469 of the Internal Revenue Code, shall be applicable.

(f) The amendments to Section 469(k) of the Internal Revenue Code made by Section 2004 of Public Law 100-647, relating to separate application of section in case of publicly traded partnerships, shall apply to income years beginning on or after January 1, 1991.

SECTION 64. Section 24990.5 of the Revenue and Taxation Code is amended to read:

24990.5. (a) Section 1201 of the Internal Revenue Code, relating to alternative tax for corporations, shall not be applicable.

(b) The provisions of Section 1212 of the Internal Revenue Code, relating to capital loss carrybacks and carryovers, shall be modified as follows:

(1) Section 1212(a)(1)(A) of the Internal Revenue Code, relating to capital loss carrybacks, shall not apply.

(2) Section 1212(a)(3) of the Internal Revenue Code, relating to special rules on carrybacks, shall not apply.

(3) Sections 1212(b) and 1212(c) of the Internal Revenue Code, relating to taxpayers other than a corporation, shall not apply.

SECTION 65. Unless otherwise specifically provided, this act shall be applied in the computation of taxes for taxable or income years beginning on or after January 1, 1991.

TITLE VI.
GENERAL PROVISIONS

SECTION 66. If any provision of this measure or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the measure which can be given effect without the invalid provision or application, and to this end the provisions of this measure are severable.

SECTION 67. The statutory provisions contained in this measure may not be amended by the Legislature except as follows:

(a) Sections 4 and 38 through 65 may be amended by statute passed in each house, a majority of the membership concurring, or by a statute that becomes effective only when approved by the electors.

(b) All other statutory provisions contained in this measure may be amended by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

California Legislature

Senate Committee

on

Revenue and Taxation

SENATOR WADIE DEDDEH, CHAIRMAN

JOINT HEARING ON PROPOSITIONS WITH

SENATE LOCAL GOVERNMENT COMMITTEE
SENATOR MARIAN BERGESON, CHAIR

ASSEMBLY REVENUE AND TAXATION COMMITTEE
ASSEMBLYMAN JOHAN KLEHS, CHAIR

AUGUST 15, 1990

SACRAMENTO, CALIFORNIA

Proposition 133 -- California Safe Street Act of 1990

General Description and Comments

This measure is sponsored by Lieutenant Governor Leo McCarthy and is expressly intended to:

1) Ensure that repeat violent offenders and drug criminals serve out their full sentences;

2) Ensure that law enforcement has the capability to reduce drug-related crime; and

3) Ensure that children are kept from entering the world of drug abuse.

This measure defines the scope of the state's drug problem, including:

-- Drug abuse costs California society at least $6 billion a year;

-- 11 percent of babies born in the U.S. in 1988 were exposed to illegal drugs during the mother's pregnancy;

-- Drug-related absenteeism and medical expenses cost businesses about 3 percent of their payroll.

Tax issue

To finance its programs, this initiative will increase the state sales and use tax by 1/2 percent (from 4 3/4 to 5 1/4 percent) from July 1, 1991, through June 30, 1995.

Presently, the state sales and use tax is 4 3/4 percent, plus a temporary 1/4 percent for the Disaster Relief Fund. The city-county tax rate is 1 1/4 percent. In addition, local jurisdictions are authorized to impose up to 1 percent in transaction and use taxes.

Thus, the combined rate now may total 7 1/4 percent in certain areas. With the sunset of the disaster relief tax and the enactment of this initiative, the combined tax rate may total 7 1/2 percent in some areas.

Funding issues

This measure will create a Safe Streets Fund, to be continuously appropriated, without regard to fiscal years, to the controller, for allocation, as specified:

1) 40% for Anti-Drug Law Enforcement Account, to be divided:

   -- 90% to local law enforcement agencies

   -- 5% to district attorneys' offices to increase their prosecutorial capabilities

   -- 5% to Judicial Council to increase ability of the courts to process drug related cases

2) 42% for Anti-Drug Education Account, to be divided:

   -- 25% to schools for anti-drug education and counseling programs;

   -- 20% for out-of-classroom programs designed to provide students with alternative activities to drug use

   -- 35% to agencies that operate state approved child development and preschool programs that require the funds due to the high intensity of drug abuse activity in the agency's jurisdiction

   -- 10% for coordinated services to at-risk students and for matching federal anti-drug education programs

-- 10% for incentive grants to local schools districts, consortia of youth services providers or county offices of education for partnership projects

3) 10% for Prisons and Jails Account, to be divided:

-- 65% for operation and construction of county jails

-- 20% for increased operating costs of the state prisons

-- 15% for drug treatment programs for prisoners in, and parolees of, state prisons and youth correctional facilities

4) 8% for Drug Treatment Account, for anti-drug health and rehabilitation programs and other support services and the treatment and prevention of drug-induced conditions.

Not more than 1 percent of the total amount allocated from any account shall be used for administrative expenses by the Attorney General, the Superintendent of Public Instruction, the Secretary of the Youth and Adult Correctional Agency, and the Secretary of Health and Welfare.

Fiscal impact

According to the Legislative Analyst and Director of Finance, this measure will raise $7.5 billion for the Safe Streets Fund over the period of 1991-92 through the first quarter of 1995-96, with an accumulation of interest earnings in the General Fund over the same period.

The funds will be allocated: $3.1 billion to anti-drug education programs; $3.3 billion to law enforcement and judicial programs; $800 million for prisons and jail; and $600 million to state and local agencies for drug treatment and prevention.

The General Fund will receive the interest earnings on the increased sales tax revenues before they are deposited into the Safe Streets Fund. Over the four-year period, these earnings will be $80 million. Under Proposition 98, K-14 education programs may receive up to 41 percent ($33 million) of these interest earnings.

The General Fund will experience minor costs beginning in 1997-98, increasing to $30 million annually by 2012-13 to support the increased prison population resulting from

elimination of sentence reduction credits. One-time costs for new prison construction could total $140 million.

Anti-drug spending

According to Legislative Analyst's Office, the state presently spends more than $1 billion annually (all funds) for anti-drug programs. Local expenditures probably are close to $2 billion. Of the amount spent by the state, approximately 70 percent goes for enforcement activities. The remainder is spent on treatment, prevention, and research programs.

Since revenue from this measure cannot supplant current levels of funding for existing programs, this initiative will more than double the state's annual expenditure for anti-drug programs. The funding will be split evenly between prevention/treatment and enforcement activities. A major change is the shift of emphasis to prevention, i.e., anti-drug education, which now accounts for probably less than 10 percent of the State's spending on anti-drug programs.

Law enforcement issues

This measure adds to the Penal Code provisions that would prohibit persons convicted of certain violent or drug-related crimes from reducing their prison sentences with credits received through participation in work or education programs. Covered are:

1) Any persons convicted in separate proceedings of two or more of the following crimes, within a 20-year period: Murder or voluntary manslaughter; attempted murder; mayhem; rape; sodomy or oral copulation by force, violence, duress, menace or fear of immediate and unlawful bodily injury; or various drug-related offenses.

2) Any persons convicted of the following crimes, when the offense or offenses involved two or more victims and at least one of the victims died of injuries sustained as a result of one of the crimes: murder, attempted murder, or voluntary manslaughter.

Program continuation

The measure provides for the Attorney General, the Superintendent of Public Instruction, the Secretary of the Youth and Adult Correctional Agency, and the Secretary of Health and Welfare to recommend to the Governor by Dec. 1, 1993, whether the programs under their jurisdictions should be continued, modified, or terminated.

By Jan. 1, 1994, the Governor shall recommend to the Legislature whether the programs and the related tax increase should be continued, modified, or terminated.

Conflict with Disaster Relief Fund

This measure amends Section 7201 (c) of the Revenue and Taxation Code to provide that any revenue derived from this initiative above the 4 3/4 percent tax will be transferred quarterly to the Safe Streets Fund. The existing language of Section 7201 (c) provides for distribution of all funds over 4 3/4 percent to the Disaster Relief Fund. That provision is deleted by the language of this initiative.

As written, the initiative would effectively eliminate distribution of taxes to the Disaster Relief Fund prior to expiration of that tax. However, AB 274, adopted as part of the 1990-91 budget package, was amended to take care of this problem. AB 274 provides for transfer of any sales tax revenue in excess of 4 3/4 percent from Nov. 7, 1990, through Dec. 31, 1990, to be transferred to the Disaster Relief Fund. The provision is operative only if this initiative is approved by the voters Nov. 6.

Consultant: Johnnie Lou Rosas

Office of the Secretary of State
March Fong Eu

1230 J Street
Sacramento, California 95814

ELECTIONS DIVISION
(916) 445-0820

For Hearing and Speech Impaired Only
(800) 833-8683

#489

December 18, 1989

TO ALL REGISTRARS OF VOTERS, OR COUNTY CLERKS, AND PROPONENT (8997)

Pursuant to Section 3513 of the Elections Code, we transmit herewith a copy of the Title and Summary prepared by the Attorney General on a proposed initiative measure entitled:

DRUG ENFORCEMENT AND PREVENTION.
TAXES. PRISON TERMS.
INITIATIVE STATUTE.

Circulating and Filing Schedule

1. Minimum number of signatures required.....372,178
Cal. Const., Art. II, Sec. 8(b).

2. Official Summary Date .....Monday, 12/18/89
Elec. C., Sec. 3513.

3. Petition Sections:

a. First day Proponent can circulate Sections for signatures.....Monday, 12/18/89
Elec. C., Sec. 3513.

b. Last day Proponent can circulate and file with the county. All sections are to be filed at the same time within each county.....Thursday, 5/17/90+
Elec. C., Secs. 3513, 3520(a)

c. Last day for county to determine total number of signatures affixed to petition and to transmit total to the Secretary of State.....Thursday, 5/24/90

(If the Proponents file the petition with the county on a date prior to 5/17/90, the county has five working days from the filing of the petition to determine the total number of signatures affixed to the petition and to transmit the total to the Secretary of State.) Elec. C., Sec. 3520(b).

+ NOTE TO PROPONENTS WHO WISH TO QUALIFY FOR THE NOVEMBER 6, 1990 GENERAL ELECTION: The law allows approximately 107 days for county election officials to check and report petition signatures and transmit results. The law also requires that this process be completed 131 days before the election in which the people will vote on the initiative. It is possible that the county may not need precisely 107 days. However, if you want to be sure that this initiative qualifies for the November 6, 1990 General Election, you should file this petition with the county before March 23, 1990.

d. Secretary of State determines whether the total number of signatures filed with all county clerks meets the minimum number of required signatures, and notifies the counties ..... Saturday, 6/2/90**

e. Last day for county to determine total number of qualified voters who signed the petition, and to transmit certificate with a blank copy of the petition to the Secretary of State ..... Friday, 6/22/90

(If the Secretary of State notifies the county to determine the number of qualified voters who signed the petition on a date other than 5/24/90, the last day is no later than the fifteenth day after the county's receipt of notification.) Elec. C., Sec. 3520(d), (e).

f. If the signature count is more than 409,395 or less than 353,569, then the Secretary of State certifies the petition has qualified or failed, and notifies the counties. If the signature count is between 353,569 and 409,395 inclusive, then the Secretary of State notifies the counties using the random sampling technique to determine the validity of all signatures ..... Monday, 7/2/90**

g. Last day for county to determine actual number of all qualified voters who signed the petition, and to transmit certificate with a blank copy of the petition to the Secretary of State ..... Tuesday, 8/14/90

(If the Secretary of State notifies the county to determine the number of qualified voters who have signed the petition on a date other than 6/22/90, the last day is no later than the thirtieth working day after county's receipt of notification.) Elec. C., Sec. 3521(b), (c).

h. Secretary of State certifies whether the petition has been signed by the number of qualified voters required to declare the petition sufficient ..... Saturday, 8/18/90

**Date varies based on receipt of county certification.

4. The Proponent of the above-named measure is:

Leo McCarthy
California Safe Streets
8616 La Tijera, Suite G
Los Angeles, CA 90045

5. Important Points:

(a) California law prohibits the use of signatures, names and addresses gathered on initiative petitions for any purpose other than to qualify the initiative measure for the ballot. This means that the petitions cannot be used to create or add to mailing lists or similar lists for any purpose, including fund raising or requests for support. Any such misuse constitutes a crime under California law. Elections Code section 29770; Bilofsky v. Deukmejian (1981) 123 Cal.App. 3d 825, 177 Cal.Rptr. 621; 63 Ops. Cal.Atty.Gen. 37 (1980).

(b) Please refer to Elections Code sections 44, 3501, 3507, 3508, 3517, and 3519 for appropriate format and type consideration in printing, typing, and otherwise preparing your initiative petition for circulation and signatures. Please send a copy of the petition after you have it printed. This copy is not for our review or approval, but to supplement our file.

(c) Your attention is directed to the campaign disclosure requirements of the Political Reform Act of 1974, Government Code section 81000 et seq.

(d) When writing or calling state or county elections officials, provide the official title of the initiative which was prepared by the Attorney General. Use of this title will assist elections officials in referencing the proper file.

(e) When a petition is presented to the county elections official for filing by someone other than the proponent, the required authorization shall include the name or names of the persons filing the petition.

(f) When filing the petition with the county elections official, please provide a blank petition for elections official use.

Sincerely,

Caren Daniels-Meade

CAREN DANIELS-MEADE
Chief, Elections Division

Attachment: POLITICAL REFORM ACT OF 1974 REQUIREMENTS

Date: December 18, 1989
File No.: SA 89 RF 0031

The Attorney General of the State of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

DRUG ENFORCEMENT AND PREVENTION. TAXES. PRISON TERMS. INITIATIVE STATUTE. Establishes Safe Streets Fund in State Treasury. Appropriates funds in account for Anti-Drug Education (42%); Anti-Drug Law Enforcement (40%); Prisons and Jails (10%); Drug Treatment (8%). Increases state sales and use taxes 1/2 cent for four years starting July 1, 1991; increased funds transferred to Safe Streets Fund. Prohibits early release of persons convicted twice of: murder; manslaughter; rape or other sexual assault; mayhem; sale, possession for sale, transportation, or manufacture of large amounts of drugs; selling drugs to minors on schoolgrounds or playgrounds; using minors to sell or transport drugs. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: This measure will raise $7.4 billion for the Safe Streets Fund over the period of 1991-92 through the first quarter of 1995-96 from increases in sales tax revenue, with an accumulation of interest earnings in the General Fund over the same period; allocations of $3.1 billion to the anti-drug education programs, $3.3 billion to law enforcement and judicial programs, and $600 million to state and local agencies for drug treatment programs during this period; minor costs to the General Fund beginning in 1991-92, increasing to more than $80 million annually by 2007-08 for support of the prison system and potential one-time costs of more than $300 million for new prison construction.

JOHN K. VAN DE KAMP
Attorney General

State of California
DEPARTMENT OF JUSTICE

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December 18, 1989

(916) 324-5508

FILED
In the office of the Secretary of State
of the State of California
DEC 19 1989
MARCH FONG EU, Secretary of State
By _____ Deputy

Honorable March Fong Eu
Secretary of State
1230 J Street
Sacramento, CA 95814

Dear Mrs. Eu:

Initiative Title and Summary
Subject: DRUG ENFORCEMENT AND PREVENTION. TAXES. PRISON TERMS. INITIATIVE STATUTE.
Our File No. SA 89 RF 0031

Pursuant to the provisions of sections 3503 and 3513 of the Elections Code, you are hereby notified that on this day we mailed to the proponent of the above-identified proposed initiative our title and summary.

Enclosed is a copy of our transmittal letter to the proponent, a copy of our title and summary, a declaration of mailing thereof, and a copy of the proposed measure.

According to information available in our records, the name and address(es) of the proponent is as stated on the declaration of mailing.

Very truly yours,

JOHN K. VAN DE KAMP
Attorney General

Mary Whitcomb

MARY WHITCOMB
Initiative Coordinator

MW:ckm

Enclosures

SA89RF0031
Amendment #1

Lt. Governor Leo T. McCarthy
400 Magellan Avenue
San Francisco, CA 94116

RECEIVED
DEC 0 8 1989
INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

December 8, 1989

The Honorable John Van de Kamp
Attorney General
1515 K Street
Sacramento, CA 94224

Dear Attorney General Van de Kamp:

I hereby submit an amended version of the Safe Streets Initiative. The only changes made are to correct three typographical errors on page five where section numbers were incorrectly numbered.

I have enclosed both a complete text of the amended initiative and a copy of page five with the changes marked in pen.

Sincerely,

Leo McCarthy

Leo McCarthy
Lieutenant Governor

Enclosures
Complete Initiative
Page Five

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

(Here set forth the title and summary prepared by the Attorney General. This title and summary must also be printed across the top of each page of the petition whereon signatures are to appear.)

TO THE HONORABLE SECRETARY OF STATE OF CALIFORNIA

We, the undersigned, registered, qualified voters of California, residents of ____ County (or City and County), hereby propose amendments to the Health and Safety Code, the Penal Code, and the Revenue and Taxation Code, relating to crimes, and petition the Secretary of State to submit the same to the voters of California for their adoption or rejection at the next succeeding general election or at any special statewide election held prior to that general election or otherwise provided by law. The proposed statutory amendments read as follows:

SECTION 1. (a) This measure shall be known and may be cited as the Safe Streets Act of 1990.

(b) It is the intent of the people, through the adoption of the California Safe Streets Act of 1990, to ensure all of the following:

(1) Repeat violent offenders and drug criminals serve out their full sentences.

(2) Law enforcement has the capability to reduce drug-related crime.

(3) Children are kept from entering the world of drug abuse.

SEC. 2. The people find and declare all of the following:

(a) The number of drug-related major crimes in California is increasing every year, reflecting the growing impact of the drug crisis and the fact that reducing illegal drug activity is an integral part of the effort to reduce crime.

(b) Many major crimes are committed by repeat offenders who have been released from prison before they serve their full sentences.

(c) Federal assistance in the war on drugs has fallen far behind the increased need.

(d) Drug abuse costs California society at least

six billion dollars ($6,000,000,000) a year.

(e) Eleven percent of babies born in the United States in 1988 were exposed to illegal drugs during the mother's pregnancy.

(f) Drug use and violent crime are closely related, as evidenced by the finding that more than half of those arrested for serious crimes in 14 major cities, and who volunteered for drug testing, are found to be drug users.

(g) Drug-related absenteeism and medical expenses cost businesses about 3 percent of their payroll.

(h) Thousands of transactions involving illegal drugs occur in the open because there are not enough law enforcement personnel to establish a presence.

(i) A successful attempt to fight the war on drugs must be comprehensive, guaranteeing punishment for those who violate the law, and protecting children before they become involved with drugs.

SEC. 3. Division 10.7 (commencing with Section 11999) is added to the Health and Safety Code, to read:

DIVISION 10.7. SAFE STREETS FUND

11999. (a) There is in the Treasury the Safe

Streets Fund, which is continuously appropriated, without regard to fiscal years, to the Controller, for allocation as specified in this division.

(b) Money appropriated pursuant to subdivision (a) shall be subject to all of the following requirements:

(1) It shall be used only for the purposes specified in this section.

(2) It shall not be used to supplant current levels of funding for existing programs, plus normal cost-of-living increases, on the date the measure adding this section to the Health and Safety Code is adopted by the voters.

(3) It shall be used only to supplement current and future state funding levels appropriated from sources other than this section.

(4) It shall not be used as part of the Special Fund for Economic Uncertainties or any other reserves.

(c) Any state or local government entity receiving funds through this section shall maintain a level of financial support for a program funded under this division which is not less than previous expenditures in accordance with standards set by any entity allocating funds pursuant to this division, which, for purposes of this subdivision, shall include the Attorney General, the

Superintendent of Public Instruction, the Secretary of the Youth and Adult Correctional Agency, and the Secretary of Health and Welfare, as appropriate.

11999.1. Funds allocated to the fund and any of its accounts pursuant to this division shall not revert to the General Fund.

11999.2. Pursuant to Section 4 of Article XIII B of the California Constitution, the state appropriations limits established by Article XIII B thereof shall be adjusted to include the appropriations made by this division for the four-year period commencing July 1, 1991.

11999.3. (a) There is in the fund the Anti-Drug Law Enforcement Account.

(b) Forty percent of any money received by the fund shall be transferred to the Anti-Drug Law Enforcement Account.

(c) Money in the Anti-Drug Law Enforcement Account shall be allocated in the following manner:

(1) Ninety percent shall be allocated to the Attorney General for distribution to local law enforcement agencies of cities, cities and counties, and counties, for personnel, equipment, and activities related to street level law enforcement. These funds shall also be used to

support community organizations attempting to fight crime and drugs. These funds shall be distributed pursuant to a formula developed by the Attorney General, in consultation with local law enforcement officials from throughout the state, which takes into account the following factors:

(A) Population.

(B) Gang activity.

(C) Property crime.

(D) Demographics.

(E) Local drug seizures.

(F) Rates of drug-related arrests and convictions.

(G) Other factors determined by the Attorney General to be relevant to those anti-drug activities described in this section.

(2) Five percent shall be allocated to the Attorney General for distribution to district attorneys' offices to increase their prosecutorial capabilities. The funds shall be distributed pursuant to a formula developed by the Attorney General, in consultation with the district attorneys throughout the state, which takes into account those factors listed in paragraph (1).

(3) Five percent shall be allocated to the Judicial Council to increase the ability of the courts to

process drug-related cases. The funds shall be used to fund new judgeships and their associated costs. Funds allocated pursuant to this subparagraph which are not used for new judgeships at the end of the fiscal year shall be allocated by the Judicial Council, on a grant basis, to counties for programs which will substantially contribute to the resolution of drug-related cases.

11999.4. (a) There is in the fund the Anti-Drug Education Account.

(b) Forty-two percent of any money received by the fund shall be transferred to the Anti-Drug Education Account, which shall be distributed to the Superintendent of Public Instruction, for allocation as follows:

(1) Twenty-five percent of funds in the account shall be allocated to schools for anti-drug education and counseling programs, including peer counseling programs, which may be conducted during or after normal school hours. All school districts and county offices of education shall provide age-appropriate anti-drug instruction in grades K to 12, inclusive, in compliance with guidelines established by the Superintendent of Public Instruction. Funds shall be allocated pursuant to this paragraph pursuant to the following requirements:

(A) Seventy percent shall be allocated annually

to eligible school districts and county offices of education in equal amounts per unit of average daily attendance. For purposes of this subdivision, the Superintendent of Public Instruction shall use annual average daily attendance reported for the fiscal year immediately prior to the year of allocation. No school district shall be eligible to receive funds pursuant to this subdivision until the appropriate county superintendent of schools has certified to the Superintendent of Public Instruction that the local educational agency's program is in accordance with the guidelines established by the Superintendent of Public Instruction.

(B) Thirty percent shall be allocated to school districts or county offices of education for schools, which, as determined by the Superintendent of Public Instruction, require the funds due to the high intensity of drug abuse activity in the agency's jurisdiction.

(2) Twenty percent of funds in the account shall be granted or allocated by contract by the Superintendent of Public Instruction to school districts, county offices of education, community organizations, and agencies of local government, for out-of-classroom programs designed to provide students with alternative activities to drug

use, and to teach self-respect and respect for others, including, but not limited to, afterschool athletic programs, homework centers, parental involvement programs, job experience programs with private employers, and community work programs. The amount of any grant or contract made pursuant to this subdivision shall be determined by the Superintendent of Public Instruction, provided that the total allocations made to agencies within a county are proportional to public school enrollment of that county.

(3) Thirty-five percent of funds in the account shall be allocated by the Superintendent of Public Instruction to agencies that operate state approved child development and preschool programs that, as determined by the Superintendent of Public Instruction, require the funds due to the high intensity of drug abuse activity in the agency's jurisdiction. The amount of any allocation made pursuant to this subparagraph shall be determined by the Superintendent of Public Instruction, provided that the total allocations made to agencies within a county are proportioned according to the existing allocation formula. The Superintendent of Public Instruction shall give priority to programs in the following order:

(A) Programs which serve children identified

pursuant to guidelines adopted by the Superintendent of Public Instruction as being at risk of unlawful drug use or involvement.

(B) State-approved preschool programs.

(4) (A) Ten percent shall be allocated to the Superintendent of Public Instruction for coordinated services to at-risk students and for matching federal anti-drug education funding.

(B) For purposes of this paragraph, "coordinated services" means those services which link together at least two needed services provided by separate governmental agencies or community organizations.

(5) (A) Ten percent shall be allocated by the Superintendent of Public Instruction for incentive grants to local school districts, consortia of youth services providers, or county offices of education for partnership projects based on compacts or agreements, for measurable improvements in school achievement which link performance to job placement with local businesses.

(B) The incentive grants provided pursuant to subparagraph (A) shall require matching funds of at least one dollar ($1) for each dollar of the state grant made pursuant to subparagraph (A).

(C) The criteria for award of the grants

provided pursuant to subparagraph (A) shall include, but not be limited to, demonstrated commitment to collaborative services on the part of business, school, and community leaders, demonstrated progress toward setting measurable goals for student achievement that will form the basis for all projects and partnership activities, project outlines for drug prevention and intervention strategies, and identification of target student population and unmet service needs for that population.

11999.5. (a) There is in the fund the Prison and Jail Account.

(b) Ten percent of the funds received by the fund shall be transferred to the Prison and Jail Account, for allocation as follows:

(1) Sixty-five percent shall be allocated to the Board of Corrections for allocations to counties for the operation and construction of county jails. The Board of Corrections shall give priority to those counties with the greatest need and the fewest immediate available local resources.

(2) Twenty percent shall be allocated to the Director of Corrections for increased operating costs of the state prisons resulting from the addition of Section 2933.5 to the Penal Code by the adoption of the Safe

Streets Act of 1990.

(3) (A) Fifteen percent shall be allocated to the Secretary of the Youth and Adult Correctional Agency for drug treatment programs for prisoners in, and parolees of, state prisons and youth correctional facilities. The Secretary of the Youth and Adult Correctional Agency shall allocate the funds to the Department of Corrections and the Department of the Youth Authority.

(B) The Director of Corrections shall distribute the funds allocated to the Department of Corrections by the Secretary of the Youth and Adult Correctional Agency pursuant to subparagraph (A).

(C) The Director of the Youth Authority shall distribute the funds allocated to the Department of the Youth Authority by the Secretary of the Youth and Adult Correctional Agency.

11999.6. (a) There is in the fund the Drug Treatment Account.

(b) (1) Eight percent of the funds received by the fund shall be transferred to the Drug Treatment Account, for allocation to the Secretary of Health and Welfare for anti-drug health and rehabilitation programs and other supportive services, and the treatment and prevention of drug-induced conditions. The Secretary of

Health and Welfare shall allocate the funds to the Department of Alcohol and Drug Programs and to those state entities which comprise the Interagency Task Force on Perinatal Substance Abuse.

(2) The Director of Alcohol and Drug Programs shall distribute funds allocated to the department by the Secretary of Health and Welfare. The Director of Alcohol and Drug Programs shall distribute the funds to county alcohol and drug abuse agencies pursuant to a formula developed by the director which takes into account the following factors:

(A) Population.

(B) Drug-related deaths.

(C) Drug-related emergency room visits.

(D) Drug-related arrests.

(E) Demographics.

(F) Poverty rates.

(G) The ability and willingness of local leaders, citizens, and entities to organize a community-based response to combat drugs.

(H) Other factors determined by the Director of Alcohol and Drug Programs to be relevant to those anti-drug activities described in this section.

(3) The Secretary of Health and Welfare shall

distribute funds allocated to the entities which comprise the Interagency Task Force on Perinatal Substance Abuse in accordance with task force goals.

11999.7. Not more than 1 percent of the total amount allocated from any account in the fund shall be nused for administrative expenses by the Attorney General, the Superintendent of Public Instruction, the Secretary of the Youth and Adult Correctional Agency, and the Secretary of Health and Welfare, including the requirements specified in Sections 11999.8, 11999.10, and 11999.11.

11999.8. By or before April 1, 1991, and on April 1 of each year thereafter, the Attorney General, the Superintendent of Public Instruction, the Secretary of the Youth and Adult Correctional Agency, and the Secretary of Health and Welfare shall each submit to the Governor and to appropriate committees of the Legislature an expenditure report outlining program expenditures for the following year.

11999.9. (a) By or before April 1, 1992, and on April 1 of each year thereafter, the Auditor General shall submit to the Governor and the appropriate committees of the Legislature a report which contains a description of how funds distributed to the Attorney General, the Superintendent of Public Instruction, the Secretary of the

Youth and Adult Correctional Agency, and the Secretary of Health and Welfare pursuant to this division were allocated, and an evaluation of the programs for which the funds were used.

(b) The Attorney General, the Superintendent of Public Instruction, the Secretary of the Youth and Adult Correctional Agency, and the Secretary of Health and Welfare shall reimburse the Auditor General for all reasonable costs incurred by the Auditor General pursuant to subdivision (a).

11999.10. By December 1, 1993, the Attorney General, the Superintendent of Public Instruction, the Secretary of the Youth and Adult Correctional Agency, and the Secretary of Health and Welfare shall each recommend to the Governor whether the programs under their jurisdiction established by this division should be continued, modified, or terminated.

11999.11. By January 1, 1994, the Governor shall recommend to the Legislature whether the program established by this division and the amendment of Sections 6051, 6201, and 7102 of the Revenue and Taxation Code by the Safe Streets Act of 1990 should be continued, modified, or terminated.

11999.12. For purposes of this division, "drug"

does not include alcohol or tobacco.

11999.13. For purposes of this division, "fund" means the Safe Streets Fund.

11999.14. This division shall remain operative only until July 1, 1995, and shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, passed by a two-thirds vote, which is enacted before January 1, 1996, deletes or extends that date.

SEC. 4. Section 2933.5 is added to the Penal Code, to read:

2933.5. (a) Any person described in paragraph (1) or (2) who is convicted of committing one or more of the crimes specified in that paragraph on or after the effective date of this section shall not be eligible for credits, as specified in Sections 2931 and 2933:

(1) Any person convicted in separate proceedings of committing two or more of the following crimes, committed within a 20-year period, which period shall not include any time served in a state prison or county jail:

(A) Murder or voluntary manslaughter.

(B) Mayhem.

(C) Rape.

(D) Sodomy by force, violence, duress, menace,

or fear of immediate and unlawful bodily injury.

(E) Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury.

(F) Attempted murder.

(G) Any violation of subdivision (a) of Section 11370.4 of the Health and Safety Code involving the possession for sale, sale, or transportation of more than three pounds of heroin, cocaine, or cocaine-base.

(H) Any violation of subdivision (b) of Section 11370.4 of the Health and Safety Code involving the possession for sale, sale, or transportation of methamphetamine, amphetamine, and their salts and isomers, or PCP and its analogs, in excess of three pounds by weight or nine gallons by liquid volume.

(I) Any violation of Section 11379.8 of the Health and Safety Code involving the manufacturing, compounding, converting, producing, delivering, processing, or preparing those controlled substances to which Section 11379.8 of the Health and Safety Code applies in excess of one pound of solid substance by weight or three gallons of liquid by volume.

(J) Conspiracy to violate subdivision (a) or (b) of Section 11370.4 of the Health and Safety Code or Section 11379.8 of the Health and Safety Code in the

amount specified in subparagraphs (G), (H), and (I), as appropriate.

(K) Any violation of Section 11353 of the Health and Safety Code involving an adult inducing, using, or employing a minor to violate Health and Safety Code provisions.

(L) Any violation of Section 11353.5 of the Health and Safety Code involving an adult selling or distributing a controlled substance on school grounds or public playgrounds during school hours to minors under the age of 14 years.

(2) Any person convicted of the following crimes, when the offense or offenses involved two or more victims and at least one of the victims died of injuries sustained as a result of one of the following crimes:

(A) Murder.

(B) Attempted murder.

(C) Voluntary manslaughter.

(b) (1) Upon conviction of any crime described in subdivision (a), the sentencing judge shall determine if this section applies to the defendant.

(2) If the sentencing judge determines, pursuant to paragraph (1) or (2) of subdivision (a), that this section applies to the defendant, no credits shall be

given with respect to the sentence of that defendant pursuant to Section 2931 or 2933, or both.

(c) (1) The conviction of any crime specified in paragraph (1) of subdivision (a) shall be applied with respect to the application of this section whether the conviction occurred before or after the effective date of this section.

(2) This section shall apply to the conviction of any crime specified in paragraph (2) of subdivision (a) which occurs after the operative date of this section.

(d) This section shall become operative January 1, 1991.

SEC. 5. Section 6051 of the Revenue and Taxation Code is amended to read:

6051. For the privilege of selling tangible personal property at retail a tax is hereby imposed upon all retailers at the rate of 21/2 percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in this state on or after August 1, 1933, and to and including June 30, 1935, and at the rate of 3 percent thereafter, and at the rate of 21/2 percent on and after July 1, 1943, and to and including June 30, 1949, and at the rate of 3 percent on and after July 1, 1949, and to and including July 31, 1967, and at

the rate of 4 percent on and after August 1, 1967, and to and including June 30, 1972, and at the rate of 33/4 percent on and after July 1, 1972, and to and including June 30, 1973, and at the rate of 43/4 percent on and after July 1, 1973, and to and including September 30, 1973, and at the rate of 33/4 percent on and after October 1, 1973, and to and including March 31, 1974, and at the rate of 43/4 percent to and including June 30, 1991, and at the rate of 51/4 percent on and after July 1, 1991, and to and including June 30, 1995, and at the rate of 43/4 percent thereafter.

SEC. 6. Section 6201 of the Revenue and Taxation Code is amended to read:

6201. An excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer on or after July 1, 1935, for storage, use, or other consumption in this state at the rate of 3 percent of the sales price of the property, and at the rate of 21/2 percent on and after July 1, 1943, and to and including June 30, 1949, and at the rate of 3 percent on and after July 1, 1949, and to and including July 31, 1967, and at the rate of 4 percent on and after August 1, 1967, and to and including June 30, 1972, and at the rate of 33/4

percent on and after July 1, 1972, and to and including June 30, 1973, and at the rate of 43/4 percent on and after July 1, 1973, and to and including September 30, 1973, and at the rate of 33/4 percent on and after October 1, 1973, and to and including March 31, 1974, and at the rate of 43/4 percent to and including June 30, 1991, and at the rate of 51/4 percent on and after July 1, 1991, and to and including June 30, 1995, and at the rate of 43/4 percent thereafter.

SEC. 7. Section 7102 of the Revenue and Taxation Code is amended to read:

7102. The money in the fund shall, upon order of the Controller, be drawn therefrom for refunds under this part, and pursuant to Section 1793.25 of the Civil Code, or be transferred in the following manner:

(a) (1) All revenues, less refunds, derived under this part at the 43/4-percent rate, including the imposition of sales and use taxes with respect to the sale, storage, use, or other consumption of motor vehicle fuel which would not have been received if the sales and use tax rate had been 5 percent and if motor vehicle fuel, as defined for purposes of the Motor Vehicle Fuel License Tax Law (Part 2 (commencing with Section 7301)), had been exempt from sales and use taxes, shall be estimated by the

State Board of Equalization, with the concurrence of the Department of Finance and shall be transferred during each fiscal year to the Transportation Planning and Development Account in the State Transportation Fund for appropriation pursuant to Section 99312 of the Public Utilities Code.

(2) All revenues, less refunds, due to the imposition of sales and use taxes on fuel, as defined for purposes of the Use Fuel Tax Law (Part 3 (commencing with Section 8601)) shall be transferred during each fiscal year to the Transportation Planning and Development Account for appropriation pursuant to Section 99312 of the Public Utilities Code.

(b) All revenues, less refunds, derived under this part at the 43/4 percent rate, resulting from increasing, after December 31, 1989, the rate of the tax imposed pursuant to the Motor Vehicle Fuel License Tax Law on motor vehicle fuel, as defined for purposes of that law, shall be transferred during each fiscal year to the Transportation Planning and Development Account for appropriation pursuant to Section 99312 of the Public Utilities Code.

(c) (1) During the period commencing July 1, 1991, and ending June 30, 1995, all revenues, less refunds and revenues subject to Article XIX of the State

Constitution, derived under this part in excess of the 43/4-percent rate, as estimated by the board, shall, with the concurrence of the Department of Finance, be transferred to the Safe Streets Fund.

(2) The estimate required by paragraph (1) shall be based on taxable transactions occurring during a calendar year.

(3) Transfers to the Safe Streets Fund shall be made quarterly.

~~(c)~~

(d) The balance shall be transferred to the General Fund.

~~(d)~~

(e) The estimate required by subdivisions (a) and (b) shall be based on taxable transactions occurring during a calendar year, and the transfers required by subdivision (a) shall be made during the fiscal year that commences during that same calendar year. Transfers required by paragraphs (1) and (2) of subdivisions (a) and (b) shall be made quarterly.

(f) This section shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a statute, passed by a two-thirds vote, which is enacted before January 1, 1996, deletes or extends that

date.

SEC. 8. Section 7102 is added to the Revenue and Taxation Code, to read:

7102. The money in the fund shall, upon order of the Controller, be drawn therefrom for refunds under this part, and pursuant to Section 1793.25 of the Civil Code, or be transferred in the following manner:

(a) (1) All revenues, less refunds, derived under this part at the 43/4-percent rate, including the imposition of sales and use taxes with respect to the sale, storage, use, or other consumption of motor vehicle fuel which would not have been received if the sales and use tax rate had been 5 percent and if motor vehicle fuel, as defined for purposes of the Motor Vehicle Fuel License Tax Law (Part 2 (commencing with Section 7301)), had been exempt from sales and use taxes, shall be estimated by the State Board of Equalization, with the concurrence of the Department of Finance and shall be transferred during each fiscal year to the Transportation Planning and Development Account in the State Transportation Fund for appropriation pursuant to Section 99312 of the Public Utilities Code.

(2) All revenues, less refunds, due to the imposition of sales and use taxes on fuel, as defined for purposes of the Use Fuel Tax Law (Part 3 (commencing with

Section 8601)) shall be transferred during each fiscal year to the Transportation Planning and Development Account for appropriation pursuant to Section 99312 of the Public Utilities Code.

(b) All revenues, less refunds, derived under this part at the 43/4 percent rate, resulting from increasing, after December 31, 1989, the rate of the tax imposed pursuant to the Motor Vehicle Fuel License Tax Law on motor vehicle fuel, as defined for purposes of that law, shall be transferred during each fiscal year to the Transportation Planning and Development Account for appropriation pursuant to Section 99312 of the Public Utilities Code.

(c) The balance shall be transferred to the General Fund.

(d) The estimate required by subdivisions (a) and (b) shall be based on taxable transactions occurring during a calendar year, and the transfers required by subdivision (a) shall be made during the fiscal year that commences during that same calendar year. Transfers required by paragraphs (1) and (2) of subdivisions (a) and (b) shall be made quarterly.

This section shall become operative January 1, 1996.

SEC. 9. The provisions of this act may be amended by statute, which is passed by the Legislature with a two-thirds vote in each house, so long as the amendments are consistent with the purposes of this act as expressed on the date of adoption by the voters.

SEC. 10. If any provision of this act or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

- 0 -

August 15, 1990

Proposition 133
"The Safe Streets Act of 1990"
Distribution of Funds in the "Safe Streets Fund" (a)
(dollars in millions)

Program	1991-92	1992-93	1993-94	1994-95	1995-96	Total
Anti-Drug Education (42 percent)						
Anti-drug education/counseling	$161	$187	$202	$219	$15	$784
Out-of-classroom/alternatives	129	150	162	175	12	628
Child development/preschool	226	262	283	306	21	1,098
At-risk students	65	75	81	87	6	314
Incentive grants	65	75	81	87	6	314
Subtotals	($646)	($748)	($809)	($874)	($60)	($3,135)
Anti-Drug Law Enforcement (40 percent)						
Local law enforcement agencies	$553	$641	$693	$749	$50	$2,686
District attorneys' offices	31	36	39	42	3	151
Courts	31	36	39	42	3	151
Subtotals	($615)	($713)	($770)	($832)	($56)	($2,986)
Prisons and Jails (10 percent)						
Jail construction and operations	$100	$116	$125	$135	$9	$485
Prison operations	31	36	39	42	3	151
Drug treatment for offenders	23	27	29	31	2	112
Subtotals	($154)	($178)	($193)	($208)	($14)	($746)
Drug Treatment (8 percent)	($123)	($142)	($154)	($166)	($11)	($597)
Totals	$1,537	$1,781	$1,925	$2,081	$140	$7,464

Notes:
(a) Based on revenue estimates provided by the Board of Equalization.

CALIFORNIANS FOR SAFE STREETS

8616 La Tijera Blvd., Suite 212-G, Los Angeles, CA 90045, 213/642-1074

August 15, 1990

STATEMENT OF LIEUTENANT GOVERNOR LEO McCARTHY
BEFORE THE SENATE REVENUE AND TAXATION COMMITTEE

I am pleased to submit this statement on behalf of Proposition 133 to your Committee. Proposition 133 is the most comprehensive plan to combat drugs and drug-related crime ever proposed in this state.

It has two main provisions. The first creates a $1.6 billion a year fund to:

- --provide anti-drug education classes for every student in kindergarten through 12th grade
- --dramatically increase the number of after-school programs to give kids alternatives to the streets
- --increase the availability of pre-school programs similar to Head Start for children at risk of drug involvement
- --greatly increase funding for drug prevention and health programs targeted at pregnant women, young mothers and their children
- --create a matching grant program involving local businesses in improving students' academic performance
- --fund school-based programs which develop a coordinated approach among agencies and groups serving high-risk children
- --increase the number of police and improve their equipment
- --provide more prosecutors and courts to handle the flood of drug-related cases
- --increase funding for state prisons and county jails.

The program would be funded by a half-cent increase in the state sales tax, which would expire in four years, unless renewed by the Legislature or the voters.

The initiative sets a 1 percent cap on administrative expenses by the state, guaranteeing that the funds go to the local entities which provide the needed services. Every year, the Attorney General, the Superintendent of Public Instruction, the Secretary of the Youth and Adult Correctional Agency, and the Secretary of Health and Welfare are required to submits reports to the Governor and the Legislature describing how they intend to spend the funds in the coming year. Each year, the Auditor General is required to submit a report to the Legislature describing and evaluating how funds were spent in the previous year.

This evaluation mandates accountability and ensures that expenditures are targeted at programs with proven track records.

In addition, the Governor is required to recommend to the Legislature by January 1, 1994 whether the entire funding program should be continued, modified or ended.

The second part of the Safe Streets Initiative requires repeat violent offenders and major drug criminals to serve out their full sentences without early parole. Under current law, a criminal who repeatedly commits serious crimes is still eligible for work programs or "good behavior" credits which can cut their sentences in half.

The Safe Streets Initiative prohibits the early release of any criminal convicted at least twice of any of the following: murder; manslaughter; rape or other sexual assault; mayhem; sale, possession for sale, transportation, or manufacture of large amounts of drugs; selling drugs to minors on school grounds or playgrounds; or using minors to sell or transport drugs.

Drug abuse is the most serious threat to the quality of life in this state. Drug abuse is tearing apart tens of thousands of families. We must finally move past the tough-guy rhetoric and do what's right to protect the public and save the next generation.

MARTIN E. HUFF
ANNE MAITLAND
JOHNNIE LOU ROSAS
CONSULTANTS

CAROL THOMAS
SECRETARY

ROOM 4086, STATE CAPITOL
SACRAMENTO, CALIFORNIA 95814
TELEPHONE 445-3808

California Legislature

Senate Committee

on

Revenue and Taxation

SENATOR WADIE DEDDEH, CHAIRMAN

JOINT HEARING ON PROPOSITIONS WITH

SENATE LOCAL GOVERNMENT COMMITTEE
SENATOR MARIAN BERGESON, CHAIR

ASSEMBLY REVENUE AND TAXATION COMMITTEE
ASSEMBLYMAN JOHAN KLEHS, CHAIR

AUGUST 15, 1990

SACRAMENTO, CALIFORNIA

Proposition 134 -- Nickel-A-Drink Tax

General Description, Comments and Issues

CURRENT ALCOHOLIC BEVERAGE TAXES

Current state law imposes alcoholic beverage taxes of:

-- 1 cent per gallon for dry wine (less than 14% alcohol), *(national average = 61 cents per gallon)*,

-- 2 cents per gallon for sweet wine (14% or more alcohol), *(national average = 61 cents per gallon)*,

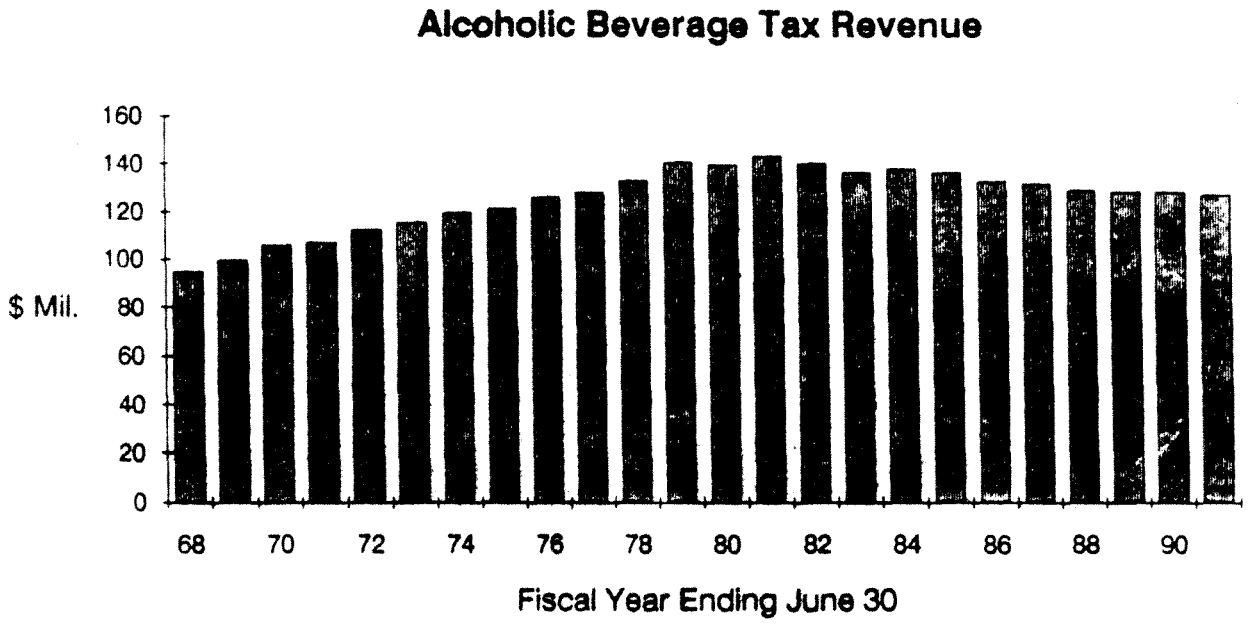
-- 30 cents per gallon for sparkling wine,

-- 4 cents per gallon for beer, *(national average = 20 cents per gallon)*,

-- $2 per gallon for distilled spirits *(national average = $3.30 per gallon)*.

The taxes are levied at the wholesale level, and are therefore built in to the retail price of these products (to a greater or

lesser degree depending on competitive conditions). They currently generate approximately $125 million annually, which is deposited in the state General Fund. As consumption of alcoholic beverages in California is declining steadily as a share of the state's economy, alcoholic beverage taxes have declined correspondingly. In fact revenues have decreased in actual dollars in nine of the last ten years, as is illustrated in the chart below:



PROPOSITION 134 -- THE ALCOHOL TAX ACT OF 1990

Section 2. The people find and declare as follows:

(a) Alcohol use drains California of approximately $13.6 billion annually in increased health care costs, higher crime rates, lost productivity, environmental damage, and injuries from alcohol-related accidents and abuse.

(b) Alcohol-related accidents are the leading cause of death among teenagers and the cause of many permanently disabling injuries.

(c) There is a strong correlation between alcohol and other drug use.

(d) Meeting the need and demand for alcohol and other drug treatment and recovery programs is an increasingly expensive burden to all California taxpayers.

(e) The use of alcohol and other drugs is a major cause of hospital emergency room and trauma care treatment, and therefore greatly contributes to the need for emergency medical air-transportation services.

(f) The use of alcohol and other drugs is closely associated with mental illness and contributes enormously to the cost of treating the mentally ill.

(g) The use of alcohol and other drugs contributes significantly to vandalism, litter, and unruly and criminal behavior in California's parks and recreation facilities.

(h) The use of alcohol and other drugs is a major factor in the majority of child and spousal abuse cases, and is also frequently associated with abuse of elderly, mentally-ill and mentally-retarded residents of long-term care facilities.

(i) Alcohol use during pregnancy causes approximately 5,000 children to be born in California each year with alcohol-related birth defects; and other drug use during pregnancy, especially cocaine, affects thousands of babies born each year.

(j) Drinking and driving, and driving under the influence of other drugs, is the major cause of traffic accidents and fatalities in California each year.

(k) Alcohol and other drug-related crimes are an increasing burden to law enforcement and the criminal justice system in California.

(l) While the staggering cost of alcohol abuse is borne by all Californians, 67 percent of the alcohol is consumed by only 11 percent of the population.

(m) An increase in the excise tax levied on alcoholic beverages equivalent to a five cents ($0.05) per drink is a fair and appropriate way to reduce alcohol's staggering burden on all California taxpayers.

ALCOHOLIC BEVERAGE TAX INCREASE

Proposition 134 would impose an <u>additional</u> state tax at a rate of 5 cents per "unit" on alcoholic beverages. "Unit" is defined as follows:

<u>5 oz. of wine</u> other than "fortified wine"
$1.28 per gallon
TOTAL RATE = $1.29 PER GALLON
2.1 times the national average

[Sparkling wine is believed to be included within this category.]

3 oz. of fortified wine
$2.13 per gallon
TOTAL RATE = $2.15 PER GALLON

["'Fortified wine'" means any wine which (i) contains alcohol in an amount equal to or more than 14 percent by volume when bottled or packaged by the manufacturer, (ii) is not both sealed and capped by cork closure, and aged two or more years, (iii) does not contain 14 or more percent of alcohol by volume solely as a result of the natural fermentation process, and (iv) has been produced with the addition of wine spirits, brandy or alcohol."]

12 oz. of beer
53 cents per gallon
TOTAL RATE = 57 CENTS PER GALLON
2.9 times the national average

1 oz. of distilled spirits
$6.40 per gallon
TOTAL RATE = $8.40 PER GALLON
2.5 times the national average

These tax provisions would go into effect January 1, 1991. They would be in addition to the present taxes imposed on alcoholic beverages, AND "shall be in addition to any other tax imposed upon beer, wine or distilled spirits by the voters at the November 6, 1990 election." (But, see the discussion of Proposition 126 (ACA 38) below.)

REVENUE ESTIMATE

The Legislative Analyst, jointly with the Department of Finance, estimates that the revenue increase due to this additional tax will yield $360 million in 1990-91 and $730 million in 1991-92. They also indicate that "due to a downward trend in alcoholic beverage consumption, the revenues would decline gradually in subsequent years."

There would also be an increase in sales tax revenue due to the increased selling price of alcoholic beverages. This would result in an increase in local sales tax revenue of $2.4 million in 1990-91 and $4.7 million in 1991-92. The sales tax increase at the state level would be approximately offset by a reduction in alcoholic beverage tax receipts due to reduced consumption as a result of the nickel-a-drink add-on tax.

ALLOCATION OF REVENUES

The revenues from the new tax would be deposited in a new Alcohol Surtax Fund, which would be allocated as follows:

24% to the Prevention, Treatment and Recovery Account:

- 4% for "prevention of alcohol and other drug problems"
- 13% for "treatment and recovery services for alcohol and other drug problems"
- 2% for "a coordinated statewide and local training, public policy and public awareness program to prevent alcohol and other drug problems, and to inform the public, particularly children and teenagers, of the potential health risks of alcohol and other drug use"
- 5% for "capital expenditures ... for housing, treatment and recovery facilities, domestic violence shelters, and homeless and low-income facilities for persons recovering from alcohol- and other drug-related problems.

25% to the Emergency and Trauma Care Account:

- 17% for "emergency medical and trauma care treatment and all related services"
- 8% for "emergency medical and trauma care services, up to the time the patient is stabilized, provided by physicians in general acute care hospitals that provide basic or comprehensive emergency services

15% to the Mental Health Account for "locally-implemented community mental health programs"

15% to the Infants, Children and Innocent Victims Account:

- 6% for "prevention, treatment and care regarding the health needs of infants, children and women due to perinatal alcohol and other drug use"
- 4% for "prevention, treatment and care regarding child abuse and child abuse victims"
- 3% for "shelter, support services and prevention programs whose primary purpose is to serve battered women and their children"

2% for "training, education, public policy, research and related support services for persons with disabilities"

21% to the Law Enforcement Account:

2% for "enforcement of laws prohibiting driving under the influence of an alcoholic beverage or any other drug, or the combined influence of an alcoholic beverage and any other drug, and related criminal justice and penal system costs and services"

14% for "enforcement of alcohol- and other drug-related laws, and related criminal justice and penal system costs and services"

2% for "recreation and park programs and projects that address alcohol and other drug impacts on public parks and facilities, including impacts on public safety, litter vandalism, youth-at-risk, and other prevention and diversion activities"

2% for "operation and administration of a statewide emergency medical air-transportation network"

1% for "enforcement, education and training relative to laws prohibiting driving under the influence of an alcoholic beverage or any other drug, or the combined influence of an alcoholic beverage and any other drug."

The proposition contains an elaborate series of formulae for allocation of funds among counties, cities, districts and state agencies (see §§32231 & 32232 of the Revenue and Taxation Code, as added by the proposition -- attached).

SOURCE OF THE ALLOCATION FORMULA

The elaborate funding formula and allocation plan described above is at least partially the result of efforts by the sponsors to generate commitments of funds and other resources sufficient to qualify the initiative for the ballot. A letter to potentially supporting organizations from one of the initiative's sponsors clearly shows that those organizations which contributed the most money or signatures were promised the greatest allocation of funds from the new tax:

"The campaign budget will evidently be about $3,000,000, including qualification and election phases. We will be expected to contribute either money

> or signatures in proportion to the benefits we receive....Those wishing to include specific program allocations will be expected to make appropriate contributions to the campaign effort." (PCL letter dated June 2, 1989)

It is doubtful whether this approach to budgeting and taxation is one which will ultimately yield the most comprehensive, effective and efficient system for delivery of public services in California.

NON-SUPPLANTING LANGUAGE

> Section 32240. Expenditures pursuant to this chapter shall be used only for the purposes specific in this chapter, shall supplement 1989-90 state funding and per capita levels of service, and shall not replace existing state funding nor fund future state expenditures for increases in the cost of providing existing per-capita levels of service. *Existing state funding and per capita levels of service for purposes specified in this chapter shall not be reduced.* [emphasis added]

Although the intent of this section of the proposition seems to be to prevent the new revenue from the alcoholic beverage surtax from being used to "free up" funds presently used for these program areas for other uses, great concern has focused on the last sentence, which seems to say that the programs which the surtax helps to fund (listed above) must perpetually be increased by workload and cost of living adjustments.

The Analyst has indicated that this may "result in unknown potential state costs, possibly rising to tens, or even hundreds, of millions of dollars in the future, to maintain 1989-90 per capita levels of service, in perpetuity, in a variety of health, mental health, criminal justice, parks, and other programs.... These costs would occur to the extent that future budgets would otherwise fund the affected programs at service levels less than 1989-90 levels of service." The Analyst indicates that this requirement "could initially raise state costs by about $180 million in 1990-91 and by over $300 million in 1991-92."

The text of most of this proposition was introduced in bill form by Assemblyman Connelly, as AB 2563. That bill "corrects" the above language, to read: "Existing state funding and per capita levels of service for purposes specified in this chapter shall not be reduced *by reason of this chapter.*" This makes it clear that the sentence is part of the non-supplanting provision, rather than an additional funding guarantee for

these programs. However this correction is NOT contained in the proposition, and therefore has no bearing on the proposition itself except to indicate that the sponsors of the proposition are aware of this flaw.

It should again be recalled that this proposition seeks to fund some of our most rapidly growing program areas from a funding source which is forecast to decline year after year. The non-supplanting language, at the least, will require the increased funding for these programs to be maintained at a work-load and inflation adjusted level in the future, regardless of the inadequacy of the funding source.

PROPOSITION 13 AND GANN LIMIT EXCLUSIONS

The proposition amends Proposition 13 by providing that Section 3, which arguably reserves to the Legislature the sole power to increase state taxes, does not apply to this proposition. This provision apparently contains a drafting anomaly--it provides that "Section 3 does not apply to the Alcohol Tax of 1990." However, Proposition 134 is titled the "Alcohol Tax Act of 1990." One interpretation could be that any "alcohol tax" *after 1990* would require a two-thirds legislative vote, including the taxes imposed by this proposition since they do not go into effect until 1991.

There could also be complex interactions between this provision and the amendments to Section 3 made by Proposition 136 (the "Taxpayers Right to Vote"), which by its terms goes into effect the day of the election. The question will be "which Section 3--the old version or the new version?" If the revised, Proposition 136 version of Section 3 applies, then this proposition might require a two-thirds popular vote in order to become effective, since it would be a "special tax" under Proposition 136's new definitions.

Proposition 134 also amends the Gann appropriations limit to provide that "appropriations subject to limitation" does not include appropriations from the Alcohol Surtax Fund, and that no adjustments in the appropriations limit of any entity are required as a result of revenue being deposited in or appropriated from the Fund.

ALCOHOLIC BEVERAGES AND TOBACCO CLASSIFIED AS "DRUGS"

Proposition 134 defines "other drugs" as:

"all addictive or controlled substances other than alcoholic beverages, as defined by Section 23004 of the Business and Professions Code, and cigarettes and tobacco products, as defined in Section 30121 of the

Revenue and Taxation code, as both sections read on January 1, 1990."

This definition is included because of numerous references in the proposition to "alcohol and other drugs."

INTERACTION WITH PROPOSITION 126 (ACA 38 -- CORTESE)

Proposition 126 is a competing tax increase on alcoholic beverages, sponsored by alcoholic beverage industry opponents of Proposition 134, and intended by its promoters as a "pre-emptive strike" at Proposition 134. It increases alcoholic beverage taxes as follows:

- 19 cents per gallon for dry wine (compared with $1.28 under Proposition 134)
- 18 cents per gallon for sweet wine (compared with $2.13 for fortified wine under Proposition 134)
- 16 cents per gallon for beer (compared with 53 cents under Proposition 134)
- $1.30 per gallon for distilled spirits (compared with $6.40 for Proposition 134)

Proposition 126 contains a provision which would make its provisions and those of Proposition 134 mutually exclusive: whichever of the propositions receives the most votes becomes effective; the other is void. Since Proposition 126 is a constitutional amendment, its "killer" clause would likely take precedence over Proposition 134, which requires that its surtax be IN ADDITION TO any other tax on the same ballot.

TAXES ON ALCOHOLIC BEVERAGES ARE REGRESSIVE

It is generally conceded that taxes on alcoholic beverages are regressive, in that the tax takes a greater share of the income of less-well-off consumers than it does for those with higher incomes. This is particularly so for consumers at the lowest end of the economic scale. Indeed, the two-thirds higher tax on "fortified wine" (which includes "skid row" wines such as Thunderbird, Night Train and "Mad Dog") is intended to target a much higher tax burden at certain segments of the low income population.

Although regressivity is usually thought of as an undesirable attribute of a tax, in this case there may be a benefit: to the extent that a significant increase in tax reduces the amount available to purchase alcohol, less alcohol will be consumed. The original rationale for imposing taxes on

"undesirable" commodities was to regulate their consumption through manipulating the price structure.

Nevertheless, for those addicted to alcohol its price elasticity is very low -- probably lower than for alternative purchases such as nourishing food or medical care for other members of the family. So one result of the tax will be to increase the family alcohol budget at the expense of alternative, more desirable purchases, thus increasing "alcohol's staggering burden" to society.

Consultant: Martin Helmke

SOS INIT-0006
Amendment #2

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed initiative:

TO THE HONORABLE SECRETARY OF STATE OF CALIFORNIA

THE ALCOHOL TAX ACT OF 1990

SECTION 1. This measure shall be known and may be cited as the Alcohol Tax Act of 1990.

SECTION 2. The people find and declare as follows:

(a) Alcohol use drains California of approximately $13.6 billion annually in increased health care costs, higher crime rates, lost productivity, environmental damage, and injuries from alcohol-related accidents and abuse.

(b) Alcohol-related accidents are the leading cause of death among teenagers and the cause of many permanently disabling injuries.

(c) There is a strong correlation between alcohol and other drug use.

(d) Meeting the need and demand for alcohol and other drug treatment and recovery programs is an increasingly expensive burden to all California taxpayers.

(e) The use of alcohol and other drugs is a major cause of hospital emergency room and trauma care treatment, and therefore greatly contributes to the need for emergency medical air-transportation services.

(f) The use of alcohol and other drugs is closely associated with mental illness and contributes enormously to the cost of treating the mentally ill.

(g) The use of alcohol and other drugs contributes significantly to vandalism, litter, and unruly and criminal behavior in California's parks and recreation facilities.

(h) The use of alcohol and other drugs is a major factor in the majority of child and spousal abuse cases, and is also frequently associated with abuse of elderly, mentally-ill and mentally-retarded residents of long-term care facilities.

(i) Alcohol use during pregnancy causes approximately 5,000 children to be born in California each year with alcohol-related birth defects; and other drug use during pregnancy, especially cocaine, affects thousands of babies

born each year.

(j) Drinking and driving, and driving under the influence of other drugs, is the major cause of traffic accidents and fatalities in California each year.

(k) Alcohol and other drug-related crimes are an increasing burden to law enforcement and the criminal justice system in California.

(l) While the staggering cost of alcohol abuse is borne by all Californians, 67 percent of the alcohol is consumed by only 11 percent of the population.

(m) An increase in the excise tax levied on alcoholic beverages equivalent to a five cents ($0.05) per drink is a fair and appropriate way to reduce alcohol's staggering burden on all California taxpayers.

SECTION 3. Section 7 is added to Article XIII A of the Constitution, to read:

SECTION 7. Section 3 does not apply to the Alcohol Tax of 1990.

SECTION 4. Section 13 is added to Article XIII B of the Constitution, to read:

SECTION 13. "Appropriations subject to limitation" of each entity of government shall not include appropriations of revenue from the Alcohol Surtax Fund created by the Alcohol Tax Act of 1990. No adjustment in the appropriations limit of any entity of government shall be required pursuant to Section 3 as a result of revenue being deposited in or appropriated from the Alcohol Surtax Fund created by the Alcohol Tax Act of 1990.

SECTION 5. Chapter 5.5 (commencing with Section 32220) is added to Part 14 of Division 2 of the Revenue and Taxation Code, to read:

Chapter 5.5. SURTAX ON BEER, WINE AND DISTILLED SPIRITS.

Article 1. Definitions.

Section 32220. For purposes of this chapter:

(a) "Fund" means the Alcohol Surtax Fund created by Section 32221.

(b) "Unit" means the appropriate measure of any of the following:

(1) Twelve ounces of beer.

(2) Five ounces of all wine, except those in subdivision (3).

(3) Three ounces of fortified wine.

(4) One ounce of distilled spirits.

(c) "Fortified Wine" means any wine which (i) contains alcohol in an amount equal to or more than 14 percent by volume when bottled or packaged by the manufacturer, (ii) is not both sealed and capped by cork closure, and aged two or more years, (iii) does not contain 14 or more percent of alcohol by volume solely as a result of the natural fermentation process, and (iv) has been produced with the addition of wine spirits, brandy or alcohol.

(d) "Other drugs" means all addictive or controlled substances other than alcoholic beverages, as defined by

Section 23004 of the Business and Professions Code, and cigarettes and tobacco products, as defined in Section 30121 of the Revenue and Taxation Code, as both sections read on January 1, 1990.

Article 2. Alcohol Surtax Fund.

Section 32221. The Alcohol Surtax Fund is hereby created in the State Treasury. The fund shall consist of all revenues raised pursuant to the taxes imposed by this chapter, and all interest and penalties imposed thereon pursuant to this part. Earnings derived from investment of monies in the fund shall accrue to the fund. Notwithstanding Section 13340 of the Government Code, moneys in the fund shall be continuously appropriated, without regard to fiscal year, for the purposes of this chapter.

Section 32222. The fund consists of five separate accounts, as follows:

(a) The Prevention, Treatment and Recovery Account, funds from which shall only be expended for the following:

(1) Prevention of alcohol and other drug problems.

(2) Treatment and recovery services for alcohol and other drug problems.

(3) A coordinated statewide and local training, public policy and public awareness program to prevent alcohol and other drug problems, and to inform the public, particularly children and teenagers, of the potential health risks of alcohol and other drug use.

(4) Capital expenditures (including accessibility improvements for the disabled) for housing, treatment and recovery facilities, domestic violence shelters, and homeless and low-income facilities for persons recovering from alcohol- and other drug-related problems.

(b) The Emergency and Trauma Care Account, funds from which shall only be expended for the following:

(1) Emergency medical and trauma care treatment and all related services.

(2) Emergency medical and trauma care services, up to the time the patient is stabilized, provided by physicians in general acute care hospitals that provide basic or comprehensive emergency services.

(c) The Mental Health Account, funds from which shall only be expended for locally-implemented community mental health programs.

(d) The Infants, Children and Innocent Victims Account, funds from which shall only be expended for the following:

(1) Prevention, treatment and care regarding the health needs of infants, children and women due to perinatal alcohol and other drug use.

(2) Prevention, treatment and care regarding child abuse and child abuse victims.

(3) Shelter, support services and prevention programs whose primary purpose is to serve battered women and their children.

(4) Training, education, public policy, research and related support services for persons with disabilities.

(e) The Law Enforcement Account, funds from which shall only be expended for the following:

(1) Enforcement of laws prohibiting driving under the influence of an alcoholic beverage or any other drug, or the combined influence of an alcoholic beverage and any other drug, and related criminal justice and penal system costs and services.

(2) Enforcement of alcohol- and other drug-related laws, and related criminal justice and penal system costs and services.

(3) Recreation and park programs and projects that address alcohol and other drug impacts on public parks and facilities, including impacts on public safety, litter, vandalism, youth-at-risk, and other prevention and diversion activities.

(4) Operation and administration of a statewide emergency medical air-transportation network.

(5) Enforcement, education and training relative to laws prohibiting driving under the influence of an alcoholic beverage or any other drug, or the combined influence of an alcoholic beverage and any other drug.

Article 3. Imposition of the Surtax on Beer, Wine and Distilled Spirits.

Section 32225. A surtax at the rate of five cents ($0.05) per unit, and at a proportionate rate for any other quantity, is imposed upon every unit of beer and wine sold in this state or sold pursuant to Section 23384 of the Business and Professions Code, by a manufacturer, wine grower, or importer, or seller of beer or wine selling beer or wine with respect to which no tax has been paid within areas over which the United States Government exercises jurisdiction.

Section 32226. A surtax at the rate of five cents ($0.05) per unit, and at a proportionate rate for any other quantity, is imposed upon every unit of distilled spirits sold in this state or sold pursuant to Section 23384 of the Business and Professions Code, by a manufacturer, distilled spirits manufacturer's agent, brandy manufacturer, rectifier, and wholesaler, or seller of distilled spirits selling distilled spirits with respect to which no tax has been paid within areas over which the United States Government exercises jurisdiction.

Section 32227. Except with respect to beer and wine in the internal revenue bonded premises of a beer manufacturer or wine grower, and except with respect to those distilled spirits in possession or control of a distilled spirits taxpayer as defined by Section 23010 of the Business and Professions Code, upon which the taxes imposed by Section 32226 have not been paid, a floor stock tax of five cents ($0.05) is hereby imposed on every unit of beer, wine and distilled spirits in the possession or under the control of

every person licensed under Division 9 (commencing with Section 23000) of the Business and Professions Code on or after 2:01 a.m. on January 1, 1991, pursuant to rules and regulations promulgated by the State Board of Equalization. This floor stock tax shall be due and payable on February 15, 1991.

Section 32228. The taxes imposed by this article shall be imposed in addition to any other tax imposed upon beer, wine or distilled spirits by this part, and shall be in addition to any other tax imposed upon beer, wine or distilled spirits by the voters at the November 6, 1990, election.

Section 32229. All the provisions of this part, with the exception of those contained in Chapter 10 (commencing with Section 32501), relating to excise taxes, are applicable also to the taxes imposed by this Article, to the extent that they are not inconsistent with this Article.

Article 4. Disposition of the Alcohol Surtax Fund

Section 32230. (a) With the exception of payments of refunds made pursuant to Chapter 8 (commencing with Section 32401), and, as determined by the Department of Finance, reimbursement of the State Board of Equalization for expenses incurred in the administration, enforcement and collection of the taxes imposed by Article 3 (commencing with Section 32225), pursuant to its powers vested by this part, and reimbursement of the Controller for expenses incurred in the administration of the fund, all moneys in the fund shall be allocated as provided in subdivision (b).

(b) Moneys in the fund shall be allocated according to the following formula:

(1) Twenty-four percent shall be deposited in the Prevention, Treatment and Recovery Account, which is to be further allocated for the purposes specified in subdivision (a) of Section 32222 as follows:

(A) Four percent for the purposes of paragraph (1).

(B) Thirteen percent for the purposes of paragraph (2).

(C) Two percent for the purposes of paragraph (3).

(D) Five percent for the purposes of paragraph (4).

(2) Twenty-five percent shall be deposited in the Emergency and Trauma Care Account, which is to be further allocated for the purposes specified in subdivision (b) of Section 32222 as follows:

(A) Seventeen percent for the purposes of paragraph (1).

(B) Eight percent for the purposes of paragraph (2).

(3) Fifteen percent shall be deposited in the Mental Health Account, which is to be allocated for purposes specified in subdivision (c) of Section 32222.

(4) Fifteen percent shall be deposited in the Infants, Children and Innocent Victims Account, which is to be further allocated for the purposes specified in subdivision (d) of

Section 32222 as follows:

(A) Six percent for the purposes of paragraph (1).

(B) Four percent for the purposes of paragraph (2).

(C) Three percent for the purposes of paragraph (3).

(D) Two percent for the purposes of paragraph (4).

(5) Twenty-one percent shall be deposited in the Law Enforcement Account, which is to be further allocated for the purposes specified in subdivision (e) of Section 32222 as follows:

(A) Two percent for the purposes of paragraph (1).

(B) Fourteen percent for the purposes of paragraph (2).

(C) Two percent for the purposes of paragraph (3).

(D) Two percent for the purposes of paragraph (4).

(E) One percent the purposes of paragraph (5).

(c) Any amount allocated from any account specified in subdivision (b) which is not expended within one year shall revert to the account from which it was appropriated.

(d) The percentages stated in subdivision (b) are stated as a percentage of the moneys deposited in the fund and not as a percentage of the moneys deposited in each account.

Section 32231. (a) Moneys appropriated pursuant to Section 32221 and allocated pursuant to Section 32230 shall be allocated for expenditure for the purposes specified in Section 32222 as follows:

(1) For all the purposes specified in paragraphs (1), (2) and (4) of subdivision (a); subdivision(b); and paragraphs (1),(2) and (3) of subdivision (d) of Section 32222; collectively, to counties pursuant to the following formula:

(i) One hundred and fifty thousand dollars ($150,000) to each county annually.

(ii) The remaining funds apportioned based on each county's proportionate share of population.

(2) For purposes specified in paragraph (3) of subdivision (a) of Section 32222, to the Department of Health Services.

(3) For purposes specified in paragraph (4) of subdivision (d) of Section 32222, to the Department of Rehabilitation.

(4) For purposes specified in paragraphs (1) and (2) of subdivision (e) of Section 32222, 50 percent to counties based on each county's proportionate share of population and 50 percent to cities based on each city's proportionate share of the population.

(5) For purposes specified in paragraph (3) of subdivision (e) of Section 32222, to cities, counties and districts as defined in the Community Parklands Act of 1986 (Chapter 3.7 (commencing with Section 5700) of Division 5 of the Public Resources Code) pursuant to the distribution formula specified in Section 5720 of the Public Resources Code, except there shall not be the minimum allocations specified in subdivision (b) and paragraph (1) of subdivision (c) of that section.

(6) For purposes specified in paragraphs (4) and (5) of subdivision (e) of Section 32222, to the California Highway Patrol.

(b) Moneys allocated pursuant to subdivision (a) shall be disbursed as follows:

(1) Paragraph (1), monthly.

(2) Paragraphs (2), (3), (4) and (6), quarterly.

(3) Paragraph (5), annually on the first day of each fiscal year.

(c) Moneys allocated in subdivision (a) based on population shall be allocated based on the most recent Department of Finance population estimates.

Section 32232. (a) Funds allocated for the purposes specified in paragraphs (1),(2) and (4) of subdivision (a) of Section 32222 shall be expended by counties pursuant to each county's final approval of separate alcohol and other drug program plans prepared in accordance with the provisions of Section 11810.5 and paragraphs (1) to (4), inclusive, of subdivision (a) of Section 11810.6 of, and paragraphs (1) to (4), inclusive, of subdivison (a) of Section 11983.2 of the Health and Safety Code, and any other provisions as determined by each county. Each county's final approved plans shall be submitted to the Department of Alcohol and Drug Programs for information purposes only.

(b) Funds allocated for the purposes specified in paragraphs (1) and (2) of subdivision (a) of Section 32222 shall be expended 70 percent for purposes related to alcohol and 30 percent for purposes related to other drugs.

(c) Funds allocated for the purposes specified in paragraph (2) of subdivision (a) of, and subdivisions (b), (c) and (d) of Section 32222 shall only be expended for payment of services to persons who cannot afford to pay for the services, and for whom payment for the services will not be made through private coverage or by any program funded in whole or in part by the federal government.

(d) Of the funds allocated for the purposes specified in paragraph (3) of subdivison (a) of Section 32222, at least 30 percent shall be expended for a mass media program that both informs the public of the potential health risks of alcohol use and counteracts alcoholic beverage marketing messages.

(e) Funds allocated for the purposes specified in paragraph (1) of subdivision (b) of Section 32222 shall be expended by counties for the provision of emergency (as defined by Section 1797.70 of the Health and Safety Code) and trauma (as defined by Section 100240 of Title 22 of the California Code of Regulations) care and all related services pursuant to Sections 17000, 17001 and 17003 of the Welfare and Institutions Code.

(f) Funds allocated for the purposes specified in paragraph (2) of subdivision (b) of Section 32222 shall be disbursed by counties to physicans, as defined in Section 1797.98a of the Health and Safety Code as that section read on January 1, 1990, for emergency and trauma care services

rendered, and shall be in addition to and shall not supplant levels of funding provided by Articles 3 (commencing with Section 16950) and 3.5 (commencing with Section 16951) of Chapter 5 of Part 4.7 of Division 9 of the Welfare and Institutions Code and the Emergency Medical Services Fund (Chapter 2.5 (commencing with Section 1797.98a) of Division 2.5 of the Health and Safety Code) for the 1989-90 fiscal year. Funds shall be disbursed at least quarterly on an equitable basis.

(g) Funds allocated for the purposes specified in subdivision (c) of Section 32222 shall be expended pursuant to mental health programs contained in Chapters 5 (commencing with Section 5450), 6 (commencing with Section 5475), and 7.6 (commencing with Section 5565.10) of Part 1, Part 2 (commencing with Section 5600) and Part 3 (commencing with Section 5800) of Division 5 of the Welfare and Institutions Code, as follows:

(1) Fifty percent for seriously mentally-ill adults.

(2) Thirty percent for emotionally-disturbed children and adolescents.

(3) Twenty percent for mentally-ill older adults.

The Department of Mental Health shall annually prepare recommendations to the Legislature on the expenditure of these funds upon review of local Short-Doyle plans or negotiated net amount contracts, as defined in Section 5705.2 of the Welfare and Institutions Code. These funds shall be used exclusively to reform and improve the support and treatment systems for the seriously mentally ill in all counties.

(h) Funds allocated for the purposes specified in paragraph (1) of subdivision (d) of Section 32222 shall be expended by counties pursuant to the authority specified in subdivisions (d) and (i) of Section 1276 of Title 17 of the California Code of Regulations.

(i) Funds allocated for the purposes specified in paragraph (2) of subdivision (d) of Section of 32222 shall be expended by counties for programs described in Article 5 (commencing with Section 18965) of Chapter 11 of Part 6 of Division 9 of the Welfare and Institutions Code.

(j) Funds allocated for the purposes specified in paragraph (3) of subdivison (d) of Section 32222 shall be expended by counties for programs described in The Domestic Violence Centers Act (Chapter 5 (commencing with Section 18290) of Part 6 of Division 9 of the Welfare and Institutions Code).

(k) Funds allocated for the purposes specified in paragraph (4) of subdivison (d) of Section 32222 shall be expended by independent living centers as defined in Section 19801 of the Welfare and Institutions Code.

(l) Funds allocated for the purposes specified in paragraph (2) of subdivison (e) of Section 32222 may be expended by counties and cities for Long Term Care Ombudsman services, as defined in Article 3 (commencing with Section 9720) of Chapter 9 of Division 8.5 of Part 1 of the Welfare

and Institutions Code, in long term care facilities, as defined in subdivision (a) of Section 9701 Welfare and Institutions Code.

(m) Funds allocated for the purposes specified in paragraph (4) of subdivison (e) of Section 32222 shall be expended for an emergency medical air-transportation system crewed by personnel of the California Highway Patrol, as defined in subdivision (a) of Section 830.2 of the Penal Code.

Article 5. General Provisions

Section 32240. Expenditures pursuant to this chapter shall be used only for the purposes specified in this chapter, shall supplement 1989-90 state funding and per capita levels of service, and shall not replace existing state funding nor fund future state expenditures for increases in the cost of providing existing per-capita levels of service. Existing state funding and per capita levels of service for purposes specified in this chapter shall not be reduced.

Section 32241. This chapter shall take effect on January 1, 1991.

Section 32242. This chapter shall be amended only by the four-fifths vote of the membership of both houses of the Legislature. All amendments to this chapter must be consistent with its purposes.

SECTION 6. If any section of this measure, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining sections shall not be affected, but shall remain in full force and effect.

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California Legislature

Senate Committee

on

Revenue and Taxation

SENATOR WADIE DEDDEH, CHAIRMAN

JOINT HEARING ON PROPOSITIONS, WITH

SENATE LOCAL GOVERNMENT COMMITTEE
SENATOR MARIAN BERGESON, CHAIR

ASSEMBLY REVENUE AND TAXATION COMMITTEE
ASSEMBLYMAN JOHAN KLEHS, CHAIR

AUGUST 15, 1990

SACRAMENTO, CALIFORNIA

Proposition 136 -- Taxpayers Right To Vote

General Description And Comments

Proposition 13, approved by the people in June 1978, contained provisions which required a two-thirds popular vote for local special taxes, and a two-thirds legislative vote for state tax increases. As Proposition 13 was imprecisely drafted, a number of questions arose which have been resolved by the courts and otherwise in ways which many supporters of Proposition 13 have found offensive. Particularly bothersome was the Farrell decision, which defined "Special taxes" as taxes which are not general taxes. That decision effectively permitted general taxes (taxes for general purposes) to be imposed by a simple vote of the governing body of the local entity.

In November 1986 the people approved Proposition 62, which attempted, among other things, to "correct" the Farrell decision. However that proposition was a statutory rather than a constitutional change. Therefore its provisions have been interpreted as not affecting charter cities, which are governed by the constitutional "municipal powers" doctrine (which

provides that city charter provisions generally have priority over statute).

Much of Proposition 136 is generally similar to the provisions of Proposition 62. But Proposition 136 is a constitutional amendment rather than a statutory initiative. Therefore it is believed that Proposition 136 will prevail over the municipal powers doctrine.

I. VOTING REQUIREMENTS FOR STATE TAXES

Existing Section 3 of Article XIII A of the constitution (enacted by Proposition 13) generally requires a two-thirds legislative vote for state tax increases or new taxes. It also provides that no new ad valorem taxes on real property (i.e., taxes based on the value of real property), and new realty sales or transfer taxes may be imposed.

Proposition 136 repeals the existing provisions of Section 3, and replaces them with a substantially expanded Section 3, which (1) distinguishes between "general" and "special" taxes; (2) provides the specific method whereby the people, by initiative, may impose or increase state taxes; (3) requires that special taxes on personal property must be based on value, and may not exceed the Article XIII A real property tax rate (1% plus the add-on debt rate).

SECTION 4. Section 3 of Article XIII A of the California Constitution is repealed.

~~Section 3. --From and after the effective date of this article, any changes in State taxes enacted for the purpose of increasing revenues collected pursuant thereto whether by increased rates or changes in methods of computation must be imposed by an Act passed by not less than two-thirds of all members of the Legislature, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property may be imposed.~~

SECTION 5. State Government General and Special Tax Limitation. Section 3 is hereby added to Article XIII A of the California Constitution to read as follows:

Section 3. (a) From and after the effective date of this section, any ... *increases* in State *general or special* taxes ... whether by increased rates, changes in methods of computation, *any other increase in an existing tax, or any new tax* must be imposed by an Act passed by not less than two-thirds of all members elected to each of the two houses

of the Legislature, ... *or as provided in subsection (b).*

(b) From and after the effective date of this section, any increases in State taxes whether by increased rates, changes in methods of computation, any other increase in an existing tax, or any new tax also may be enacted by an initiative passed, in the case of a general tax, by not less than a majority vote of the voters voting in an election on the issue or, in the case of a special tax, and notwithstanding Article II, §10(a) of the California Constitution, by not less than a two-thirds vote of the voters voting in an election on the issue, or as provided in subsection (a).

(c) Except as provided in Article XIII A, §§1 and 2 of the California Constitution, no new ad valorem taxes on real property or sales or transactions taxes on the sale of real property may be imposed.

(d) Any special tax with respect to tangible personal property enacted on or after November 6, 1990, must be an ad valorem tax and must comply with the provisions of Article XIII, §2 of the California Constitution.

(e) As used in this section, "general taxes" are taxes, including, but not limited to, income taxes, excise taxes, and surtaxes, levied for the general fund to be utilized for general governmental purpose; "special taxes" are taxes, including, but not limited to, income taxes, excise taxes, surtaxes, and tax increases, levied for a specific purpose or purposes or deposited into a fund or funds other than the general fund. Taxes on motor vehicle fuel shall be considered general taxes for purposes of this section.

[Note that *italics* indicates new language and "..." indicates a deletion.]

Proposition 136 issues:

1. By referring to ad valorem property taxes in this section (which provides for state tax limitations), the proposition may contemplate state-wide property taxation for state purposes (such as debt service). It may be that property tax may now be used to back state bond issues. This could involve a vast increase in property tax debt rates for state purposes.

2. The reworded version of subdivision (a) is intended to prevent legislation containing a mixture of tax increases and decreases from being passed by a majority vote. Is this an undue

restriction on the power of the legislature to enact packages of tax legislation?

Most significant federal conformity legislation involves offsetting revenue increases and decreases. While it has been generally conceded that our tax laws should be kept closely in conformity with federal laws, this practice will now require a two-thirds vote, even for packages which do not increase total revenue. Does the relatively straightforward annual housekeeping decision to conform our tax laws with federal tax changes merit this super-majority measure?

3. Despite the drafters' apparent intent to prevent adoption of "wash" tax bills (those with offsetting tax increases and decreases) by a majority vote, it is not clear from the wording that proposition will accomplish its goal. The language is replete with the word "any," which probably is intended to mean "where any tax is increased" or "whenever anyone's tax is increased." However the language can probably still be interpreted as similar to present law--allowing "revenue neutral" bills comprising both tax increases and decreases. (This would have been different had the proposition referred to "...any legislation which contains increases in State general or special taxes...."

4. The restriction on special taxes on tangible personal property was specifically designed to void the alcoholic beverage tax increase contained in Proposition 134. However it will also forever restrict the use of state taxes on tangible personal property, including sales taxes, from being directed toward particular needs, even when approved by the people (except in the event of a disaster or emergency--see Section 7, below). Is this restriction warranted? What is so special about taxes on a unit basis (such as on alcoholic beverages and tobacco products) which requires this extraordinary provision?

   (This is one of the provisions of Proposition 136 by which the proposition's drafters hope to nullify Proposition 134, the alcoholic beverage tax increase.)

5. There is no definition of "taxes." Many of Proposition 136's proponents have in the past argued for treatment of motor vehicle taxes as

"fees." Could not the same logic be used avoid the two-thirds vote requirement in other areas? Perhaps an income tax increase could be billed as a "health care fee" since all taxpayers will surely need health care sometime or other? It may be that the restrictions contained in this proposition will serve as the "necessity" for further rounds of such fiscal "invention" in future years.

6. There is a conflict between subdivisions (b), (c) and (d). Subdivision (b) allows the people by either a majority or two-thirds vote to enact ANY increases in state taxes, or ANY new taxes. Subdivisions (c) and (d) restrict what taxes the people may enact. Which takes precedence--the authority in (b) or the limitations of (c) and (d)?

   Or do subdivisions (b) and (c) only apply to legislatively imposed taxes, since subdivision (a) is less broad in that it provides that any legislatively imposed tax increase MUST be imposed by a two-thirds vote? This would in effect grant the people the right to impose property taxes for state general purposes, for example, or to enact a state realty transfer tax.

7. For local governments all taxes must be either general taxes or special taxes. However this requirement is not present for state taxes. Furthermore, subdivision (e) does not appear to include "tax increases" levied for the general fund within the definition of "general taxes." There thus appears to be a hybrid category of "tax increases" for general purposes which would be considered neither "general taxes" nor "special taxes," which therefore are presumably NOT subject to the legislative two-thirds vote. This would be a substantial broadening of legislative taxing powers.

   One theory holds that increases in the state corporate franchise tax, which is not an income tax, an excise tax or a surtax, would qualify for this "neither fish nor fowl" category of taxes which may be increased by a majority legislative vote.

8. By including taxes on motor vehicle fuel within the definition of "general taxes" (to be utilized for general governmental purposes), Proposition 136 may effectively repeal Article

XIX's restrictions on use of motor vehicle fuel taxes for highway and transportation purposes.

9. Some people believe that revenues are increased when tax rates are lowered. If this is true, might this proposition require tax rate decreases to be passed by a two-thirds vote, since they would result in increased tax revenues?

10. Although new Section 3 is titled by the initiative to provide a "State Government General and Special Tax Limitation," that title is not part of the Constitution. Thus, subdivisions (c), (d) and (e) may be interpreted to apply to taxes levied by all levels of government, not just to state taxes. To the extent that there are conflicts between these provisions and similar provisions in Section 4 (below), it is not clear which would prevail.

II. VOTING REQUIREMENTS FOR LOCAL TAXES

SECTION 6. Section 4 of Article XIII A of the California Constitution is repealed.

~~Section 4.--Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on real property within such City, County or special district.~~

SECTION 7. Local Government and District General and Special Tax Limitation. Section 4 is hereby added to Article XIII A of the California Constitution to read as follows:

Section 4. (a) Notwithstanding Article II, §9(a) of the California Constitution, no local government or district, whether or not authorized to levy a property tax, may impose any new general tax or increase any existing general tax on such locality or district unless and until such proposed general tax or increase is submitted to the electorate of the local government or of the district and enacted by a majority vote of the voters voting in an election on the issue.

(b) Notwithstanding Article II, §9(a) of the California Constitution, no local government or district may impose any new special tax or increase any existing special tax on such locality or district unless and until such proposed special tax or increase is submitted to the electorate of the local government or of the district and enacted by a two-thirds vote of the voters voting in an election on the issue. The

revenues from any special tax shall be used only for the purpose or service for which it was imposed, and for no other purpose whatsoever.

(c) Except as provided in Article XIII A, §§ 1 and 2 of the California Constitution, no local government or district may impose any new ad valorem taxes on real property or a transaction tax or sales tax on the sale or transfer of real property within that local government or district.

(d) A tax subject to the vote requirements of subdivisions (a) or (b) of this section shall be proposed by an ordinance or resolution of the legislative body of the local government or of the district. The ordinance or resolution shall include the type of tax and maximum rate, if any, of tax to be levied, the method of collection, the date upon which an election shall be held on the issue, and, if a special tax, the purpose or service for which its imposition is sought.

(e) As used in this section, "local government" means any city, county, city and county, including a chartered city or county or city and county, or any public or municipal corporation; "district" means an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

(f) As used in this section, "general taxes" are taxes levied for the general fund to be utilized for general governmental purposes; "special taxes" are taxes levied for a specific purpose or purposes or deposited into a fund or funds other than the general fund. As used in this section, "voter" is a person who is eligible to vote under the provisions governing the applicable election. All taxes imposed by any entity of local government shall be deemed to be either general taxes or special taxes. Sales and use taxes voted on at a local level for transportation purposes shall be considered general taxes for purposes of this section.

Sections 6 & 7 of the initiative, replacing Section 4 of Article XIII A, place in the State Constitution requirements for levies of new and increased taxes. These requirements expand the requirements imposed since 1978.

Existing Requirements

Since the adoption of Proposition 13 in 1978, initiatives, statutes, court decision and legal opinions have combined to

limit local government's ability to raise or impose taxes. The following is a brief history of these local limitations:

-- Proposition 13. This initiative established the basic tax limitations. It introduced, but did not define, the distinction between "general" tax levies imposed with a majority vote and "special" tax levies approved with a 2/3 majority vote. A definition was supplied in the Farrell decision.

-- City and County of San Francisco v Farrell. When the San Francisco voters approved a gross receipts tax by 55 percent margin, the city controller refused to certify that the funds were available for appropriation. The controller, John Farrell, argued that the tax levy was a special tax, imposed without the 2/3 vote requirement required by Proposition 13. In this case, the Appellate Court defined "special" tax as a tax levied for a specific purpose. Under this definition, the San Francisco tax was not a special tax. Indeed, under the Farrell decision, taxes which were not "special" taxes could be imposed by a local government by a simple vote of the governing body. (Proposition 62, approved by the voters in 1986, codified the Farrell definition, and added the further requirement that "general" taxes may only be imposed by a majority popular vote.)

-- Los Angeles Transportation Commission v Richmond. The court considered whether a transit district could levy a transactions and use tax ("local sales tax") without meeting the stricter special tax super-majority vote requirements. The court ruled that the higher vote requirements did not apply because: (a) the transit district had taxing authority existing prior to the enactment of Proposition 13, and (b) even if it did not have this existing authority, Proposition 13 was a property tax measure and did not apply to a district which had no property taxing authority.

The court left open whether the lack of property tax authority was in itself sufficient to exempt a district or agency from the special tax provisions. Questions remain about the vote requirements for general tax levies made by special districts.

-- Proposition 62. With this statutory initiative, the voters attempted to codify the distinctions

between special and general taxes, as defined in Farrell.

The initiative also required the Legislature to authorize districts to levy special taxes. In the wake of this initiative, the Legislature has authorized the use of special taxes for school districts, library districts and county service areas.

In addition, Proposition 62 did not provide sufficient guidance on the levy of general taxes by special districts. Given the terms of the Richmond decision, important questions remain about the conditions under which the Legislature may authorize a district to levy general taxes with a majority vote.

In a case decided prior to adoption of the initiative (Jarvis v Eu), the appellate court opined that Proposition 62 did not require charter cities to submit general taxes to a vote of their electorate.

-- Schopflin v Dole. In this case, the court addressed questions about the election requirements imposed by Proposition 62. Although the case has been decertified and therefore applies only to taxes in Sonoma County, the logic of the case is important. In Schopflin, the court held that the vote requirements in Proposition 62, amounting to a referendum on a tax levy, are a violation of Article 2, Section 9 of the California Constitution. The case raises questions about whether the statutory provisions of Proposition 62, by its own terms in requiring elections on levies, is unconstitutional.

Legislative authorization

Within this context, the Legislature has attempted to authorize new local districts with general taxing authority. In particular:

-- SB 142 (Deddeh)--Chapter 786, Statutes of 1987, authorized counties to create transportation districts. The legislation also authorized the district to fund transportation improvements with an additional sales tax levy of up to 1%. The tax could be imposed with a majority vote of the electorate.

-- AB 999 (Farr)--Chapter 1257, Statutes of 1987, authorized counties to impose half-cent sales tax increases in small counties, provided that the increase was placed on the ballot by the board of supervisors and approved by a majority of the electorate.

-- AB 2505 (Stirling)--Chapter 1258, Statutes of 1987, authorized San Diego to establish a jail financing agency and to levy a half-cent sales tax with approval by a simple majority of the voters.

-- AB 1067 (Hauser)--Chapter 1335, Statutes of 1989, authorized the formation of a local jail authority, whose governing board had a majority made up of county supervisors. The legislation authorized the jail's governing board to levy a sales tax increase with a majority voter approval.

The provisions of AB 2505 and AB 1067 were successfully challenged when the courts invalidated the bills' simple majority provisions. In these cases, judges found that the legislation made an impermissible attempt to circumvent the 2/3 vote requirements on special taxes. In addition, the Attorney General issued an opinion (number 89-604) stating that the popular vote requirement in AB 999 was tantamount to a referendum on a tax levy. As such, the referendum was in conflict with Section 9 of Article II of the State Constitution, and therefore unconstitutional.

Thus, four years after the adoption of Proposition 62, there is considerable confusion about the application of the initiative's vote requirements. To summarize, the confusion lies in three areas:

-- Proposition 62 requirements do not apply equally to all local governments. Given the court's decision in Jarvis v Eu, charter cities are subject to different requirements than other local governments. In addition, because of the decision in Schopflin v Dole, Sonoma County is completely exempt from the Proposition 62 requirements. Thus, the tax requirements imposed by Proposition 62 apply differently depending on which local jurisdiction is imposing the tax.

-- Uncertainty about whether a statute can require referenda on tax levies. Section 9 (a), Article II of the State Constitution prohibits referenda on tax levies. The Attorney General believes that this provision prohibits the State

from authorizing the levy of a local tax subject to a local vote. Under what circumstances can the Legislature authorize tax levies? Under what circumstances can a local governing board impose a new tax or higher levy?

-- Uncertainty about tax levies made by special-purpose districts. When does a special-purpose district function as an "alter ego" of a county board of supervisors? If a district does function as an alter ego, must it always secure a 2/3 vote on tax levies?

Proposition 136 addresses some of this confusion, but does not provide explicit guidance about the special-purpose districts.

Local Taxing Authority

Article XI of the California Constitution permits a city, by a majority vote of its electors, to adopt a charter for the purpose of enacting ordinances relating to its municipal affairs. As part of this constitutional grant of authority, charter cities have broad powers to levy taxes to support municipal activities (subject to voter approval of special taxes).

In 1982, the Legislature provided to those cities which had not adopted charters, and which operated under general state law, the same taxing powers as charter cities (Chapter 327, Statutes of 1982). Previously these general law cities had been able to levy only business license, transient occupancy and property transfer taxes. Through 1990, counties' taxing authority is limited to the levying of the transient occupancy and property transfer taxes which do not overlap taxes imposed by their cities. Beginning on January 1, 1991, pursuant to SB 2557 (Maddy), Chapter 466, Statutes of 1990, counties may levy utility users' and business license taxes in their unincorporated areas.

-- Business license taxes may be levied at a flat rate or based on the number of employees, receipts, sales or quantity of goods produced. No taxes may be levied on business income since the state has reserved the right to tax income.

-- Property transfer taxes are levied on the sellers of real property. There is a statutory rate of $.55 per $500 of value which is exceeded by some charter cities. Cities and counties share the tax proceeds in incorporated areas.

-- Transient occupancy taxes are levied upon those who occupy lodging for less than 30 days. Rates are set locally by cities and by counties in unincorporated areas.

-- Utility users taxes may be levied on all or some of public utility services (gas, electricity, telephone, water, cable television)

The following table shows the revenues generated by these taxes in 1987-88 and the proportion they represent of the total amount of general tax revenue available to local agencies for expenditure. In total, these taxes (and other nonproperty taxes) account for approximately 23 percent of general tax revenues.

Amount of Local General Taxes Collected
1987-88

(Dollars in Millions)

	Cities	Counties	San Francisco	Totals
Property	$1,487	$4,011	$340	$5,838
Sales	2,048	287	77	2,412
Business License	436	0	19	455
TOT	301	37	61	399
Property transfer	91	101	19	211
Utility Users	687	0	34	721
Other	425	60	129	614
Totals	$5,475	$4,496	$679	$10,650

Source: State Controllers' Office

Proposition 136 issues:

1. The provisions of subdivisions (a), (b), (c) and (f) are very similar to those governing state-levied taxes. Many of the same issues raised above apply here as well.

2. The initiative does not repeal statutory provisions of Proposition 62. The initiative, a constitutional amendment, is similar to, but not duplicative of, Proposition 62. By itself, the initiative does not repeal these similar sections, though the Legislature could amend the statutory provisions of Proposition 62. Should voters assume that the Legislature will amend the statutory provisions of Proposition 62 to conform with constitutional provisions of Proposition 136? Should the Legislature assume that the initiative's drafters intended that existing

statute be maintained in their current form? If not, why did the drafters not propose to amend or repeal the statutory provisions?

3. Proposition 136 does not fully address the tax requirements of special-purpose districts. This initiative is silent on how to identify when a special-purpose district is an "alter ego" of the county board of supervisors.

4. The definition of "district" may include state agencies. Subdivision (e) provides that "'district' means any agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries." "District" might include a local office of the Board of Equalization, which "imposes" taxes within its designated boundaries. Or it might include the state agency which imposes the "landing tax" on various fish and frogs, which the proposition's sponsors feature in their promotional brochure.

   Whether this further limits state taxing authority, or grants additional leeway, remains to be seen. For example, it is not clear what "voters" and "electorate" means for "districts" which are state agencies or divisions thereof. Might it mean the board members directing the "district?"

5. Existing local realty transfer taxes appear to be repealed. Subdivision (c) provides that

   > "except as provided in §§1 and 2 of the California Constitution, no local government or district may impose any new ad valorem taxes on real property or a transaction tax or sales tax on the sale or transfer or real property."

   As the word "new" seems only to modify "ad valorem taxes on real property," the language appears to require repeal of <u>existing</u> realty transfer taxes (which presently yield more than $200 million annually to cities and counties).

III. DISASTER PROVISIONS

SECTION 8. Disaster and Emergency Relief. Section 7 is hereby added to Article XIII A of the California Constitution to read as follows:

Section 7. The provisions of sections 3(a) and (d) of this article which impose limits on new or existing State taxes may be suspended by a two-thirds vote of the Legislature and the approval of the governor in order to permit funds to be raised for up to two years for disaster relief required by earthquake, fire, flood, or similar natural disaster or for emergencies declared by the Governor. The provisions of sections 4(a) and (b) of this article which impose limits on new or existing local taxes may be suspended by a two-thirds vote of the legislative body of the local government or district, as defined in section 4(e) above, in order to permit funds to be raised for up to two years for disaster relief required by earthquake, fire, flood, or similar natural disaster or for emergencies declared by the governor.

Proposition 136 issues:

1. Presumably the Governor, in declaring an emergency, is not limited to natural disasters. Also, presumably "emergency" is broader than "disaster" and could embrace "unnatural disasters" such as recession, plant closings, energy crisis, war, etc.

   This view of the language is strengthened by the fact that there is no definition of "emergency" in the measure. Nor is reference made to Section 3 of Article XIII B (as amended by Proposition 111) which provides a limited definition of "emergency."

2. The two year limit would appear to apply to the two-thirds vote rather than to the disaster. For example, if disaster relief is required for more than two years, a subsequent two-thirds vote would be necessary to again suspend the Section 3 or 4 vote requirements.

3. A local government may be able to avoid the popular vote requirement for fire, flood or earthquake programs, simply by declaring those programs to be disaster related. "Disaster preparedness" could be argued to be "disaster relief."

IV. LIBERAL CONSTRUCTION

SECTION 9. Liberal Construction. The provisions of this Act shall be liberally construed to effect its purposes.

This is a standard section which effectively asks courts and those responsible for implementing the initiative to give the benefit of the doubt to the drafters of the initiative. It is in this context that Sections 2 and 3 of the initiative (which describe "Findings and Declarations" and "Purpose and Intent" respectively -- see the text of the proposition, attached) have relevance.

V. EFFECTIVE DATE AND CONFLICTING INITIATIVES

SECTION 10. Effective Date. This Act shall take effect on November 6, 1990.

SECTION 11. Conflicting Law. Pursuant to Article II, §10(b) of the California Constitution, if this measure and another measure appear on the same ballot and conflict, and this measure receives more affirmative votes than such other measure, this measure shall become effective and control in its entirety and said other measure shall be null and void and without effect. If the constitutional amendments contained in this measure conflict with statutory provisions of another measure on the same ballot, the constitutional provisions of this measure shall become effective and control in their entirety and said other measure shall be null and void and without effect irrespective of the margins of approval. This initiative is inconsistent with any other initiative on the same ballot that enacts any tax, that employs a method of computation, or that contains a rate not authorized by this measure, and any such other measure shall be null and void and without effect.

Proposition 136 issues:

1. Article II, Section 10 (a) provides that "an initiative statute or referendum ... takes effect the day after the election unless the measure provides otherwise." As Proposition 136 is neither an initiative statute nor a referendum, it is not altogether clear when it takes effect. Nor is it clear that even an initiative statute may take effect at a time prior to the completion of the election (e.g., the day of the election).

2. The clear intent of new Sections 3(d) of the Constitution, and Sections 10 and 11 of the proposition is to "poison" the three other initiatives (Propositions 129, 133 and 135). By being effective the day before the other three initiatives are effective, it attempts to preempt and nullify them.

   Article XVIII, Section 1 provides that "the Legislature ... may propose an *amendment or revision* of the Constitution ...." Section 2 provides that "the Legislature ... may submit at a general election the question whether to call a convention to *revise* the Constitution...." Section 3 provides that "the electors may *amend* the Constitution by initiative." [emphasis added] It is not clear what the difference is between "amend" and "revise." One reasonable distinction, considering the context, may be that "amending" the Constitution involves changing the rules of the game, but that "revising" the constitution has something to do with changing HOW the rules of the game may be changed.

   Proposition 136 intends both to change how taxes may be enacted **as well as** to limit the ability of other initiatives to impose taxes. This latter attempt may be an impermissible revision rather than an amendment, and may thus be void.

3. The Constitution provides that an initiative measure may have only one subject. The California Supreme Court has accepted jurisdiction over a suit by the proponents of Propositions 129, 133 and 134, who argue that Proposition 136's effect is both to set the vote requirements for state and local taxes AND to nullify three competing Propositions, and that this constitutes multiple subjects. Last week the Supreme Court announced that it would not remove the proposition from the ballot. The fate of this argument therefore still awaits resolution.

VI. SEVERABILITY

> SECTION 12. Severability. If any provision of this Act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining sections shall not be affected, but shall remain in full force and effect, and to this end the provisions of this Act are severable.

This is a boiler-plate severability clause.

Proposition 136 issue:

While this section provides for severability, the preceding section of the proposition requires that where there is a conflict with another initiative on the same ballot the provisions of this proposition will "become effective and control *in their entirety*." Does this preclude severability in the event of a conflict with another proposition?

Consultants:

Martin Helmke, Senate Revenue & Taxation Committee
John Decker, Assembly Local Government Committee

THE TAXPAYERS RIGHT-TO-VOTE ACT OF 1990

SECTION 1. Title. This Act shall be known and may be cited as The Taxpayers Right-to-Vote Act of 1990.

SECTION 2. Findings and Declarations. The People of the State of California hereby find and declare as follows:

(a) Taxes should not be imposed on the People of California without their consent.

(b) In order to protect all taxpayers from sudden and unreasonable increases in general taxes which would threaten their economic security, limitations should be placed on general tax increases and the imposition of new general taxes.

(c) In order to protect targeted segments of taxpayers from special taxes imposed upon them alone, limitations should be placed on special tax increases and the imposition of new special taxes by special interests.

(d) No increase in special taxes imposed by counties, special districts, charter cities, or general law cities, and no new special tax imposed by these entities, should take effect without a two-thirds vote of the People.

(e) No increase in special taxes imposed by the State of California, and no new special tax imposed by the State of California, should take effect without a two-thirds vote of the People or a two-thirds vote of both houses of the Legislature.

(f) No increase in general taxes imposed by the State of California, and no new general tax imposed by the State of California, should take effect without a majority vote of the People or a two-thirds vote of both houses of the Legislature.

(g) No increase in general taxes imposed by counties, special districts, charter cities, and general law cities, and no new general tax imposed by these entities, should take effect without a majority vote of the People.

(h) No excessive and unfair special taxes with respect to tangible personal property should be imposed.

(i) In keeping with the spirit of Proposition 13, except as provided in Article XIII A, §§ 1 and 2 of the California Constitution, no new ad valorem taxes on real property or sales or transaction taxes on the sale of real property may be imposed.

SECTION 3. Purpose and Intent. The People of the State of California declare that their purpose and intent in enacting this measure is as follows:

(a) To prevent the imposition of any new State general tax or an increase in any existing State general tax without a majority vote of the People or a two-thirds vote of both houses of the Legislature.

(b) To prevent the imposition of any new State special tax or an increase in any existing State special tax without a two-thirds vote of the People or a two-thirds vote of both houses of the Legislature.

(c) To prevent the imposition of any new local general tax or an increase in any existing local general tax without a majority vote of the People.

(d) To prevent the imposition of any new local special tax or an increase in any existing local special tax without a two-thirds vote of the People.

(e) To protect against the imposition of excessive and unfair special taxes with respect to tangible personal property.

(f) To prohibit the imposition of any new ad valorem taxes on real property or any transaction tax or sales tax on the sale or transfer of real property except as provided in Article XIII A, §§ 1 and 2 of the California Constitution.

SECTION 4. Section 3 of Article XIII A of the California Constitution is repealed.

SECTION 5. State Government General and Special Tax Limitation. Section 3 is hereby added to Article XIII A of the California Constitution to read as follows:

Section 3. (a) From and after the effective date of this section, any increases in State general or special taxes whether by increased rates, changes in methods of computation, any other increase in an existing tax, or any new tax must be imposed by an Act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature, or as provided in subsection (b).

(b) From and after the effective date of this section, any increases in State taxes whether by increased rates, changes in methods of computation, any other increase in an existing tax, or any new tax also may be enacted by an initiative passed, in the case of a general tax, by not less than a majority vote of the voters voting in an election on the issue or, in the case of a special tax, and notwithstanding Article II, §10(a) of the California Constitution, by not less than a two-thirds vote of the voters voting in an election on the issue, or as provided in subsection (a).

(c) Except as provided in Article XIII A, §§ 1 and 2 of the California Constitution, no new ad valorem taxes on real property or sales or transaction taxes on the sale of real property may be imposed.

(d) Any special tax with respect to tangible personal property enacted on or after November 6, 1990, must be an ad valorem tax and must comply with the provisions of Article XIII, § 2 of the California Constitution.

(e) As used in this section, "general taxes" are taxes, including, but not limited to, income taxes, excise taxes, and surtaxes, levied for the general fund to be utilized for general governmental purposes; "special taxes" are taxes, including, but not limited to, income taxes, excise taxes, surtaxes, and tax increases, levied for a specific purpose or purposes or deposited into a fund or funds other than the general fund. Taxes on motor vehicle fuel shall be considered general taxes for purposes of this section.

SECTION 6. Section 4 of Article XIII A of the California Constitution is repealed.

SECTION 7. Local Government and District General and Special Tax Limitation. Section 4 is hereby added to Article XIII A of the California Constitution to read as follows:

Section 4. (a) Notwithstanding Article II, §9(a) of the California Constitution, no local government or district, whether or not authorized to levy a property tax, may impose any new general tax or increase any existing general tax on such locality or district unless and until such proposed general tax or increase is submitted to the electorate of the local government or of the district and enacted by a majority vote of the voters voting in an election on the issue.

(b) Notwithstanding Article II, §9(a) of the California Constitution, no local government or district may impose any new special tax or increase any existing special tax on such locality or district unless and until such proposed special tax or increase is submitted to the electorate of the local government or of the district and enacted by a two-thirds vote of the voters voting in an election on the issue. The revenues from any special tax shall be used only for the purpose or service for which it was imposed, and for no other purpose whatsoever.

(c) Except as provided in Article XIII A, §§ 1 and 2 of the California Constitution, no local government or district may impose any new ad valorem taxes on real property or a transaction tax or sales tax on the sale or transfer of real property within that local government or district.

(d) A tax subject to the vote requirements of subdivisions (a) or (b) of this section shall be proposed by an

ordinance or resolution of the legislative body of the local government or of the district. The ordinance or resolution shall include the type of tax and maximum rate, if any, of tax to be levied, the method of collection, the date upon which an election shall be held on the issue, and, if a special tax, the purpose or service for which its imposition is sought.

(e) As used in this section, "local government" means any city, county, city and county, including a chartered city or county or city and county, or any public or municipal corporation; "district" means an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

(f) As used in this section, "general taxes" are taxes levied for the general fund to be utilized for general governmental purposes; "special taxes" are taxes levied for a specific purpose or purposes or deposited into a fund or funds other than the general fund. As used in this section, "voter" is a person who is eligible to vote under the provisions governing the applicable election. All taxes imposed by any entity of local government shall be deemed to be either general taxes or special taxes. Sales and use taxes voted on at a local level for transportation purposes shall be considered general taxes for purposes of this section.

SECTION 8. Disaster and Emergency Relief. Section 7 is hereby added to Article XIII A of the California Constitution to read as follows:

Section 7. The provisions of sections 3(a) and (d) of this article which impose limits on new or existing State taxes may be suspended by a two-thirds vote of the Legislature and the approval of the Governor in order to permit funds to be raised for up to two years for disaster relief required by earthquake, fire, flood, or similar natural disaster or for emergencies declared by the Governor. The provisions of sections 4(a) and (b) of this article which impose limits on new or existing local taxes may be suspended by a two-thirds vote of the legislative body of the local government or district, as defined in section 4(e) above, in order to permit funds to be raised for up to two years for disaster relief required by earthquake, fire, flood, or similar natural disaster or for emergencies declared by the Governor.

SECTION 9. Liberal Construction. The provisions of this Act shall be liberally construed to effect its purposes.

SECTION 10. Effective Date. This Act shall take effect on November 6, 1990.

SECTION 11. Conflicting Law. Pursuant to Article II, §10(b) of the California Constitution, if this measure and another

measure appear on the same ballot and conflict, and this measure receives more affirmative votes than such other measure, this measure shall become effective and control in its entirety and said other measure shall be null and void and without effect. If the constitutional amendments contained in this measure conflict with statutory provisions of another measure on the same ballot, the constitutional provisions of this measure shall become effective and control in their entirety and said other measure shall be null and void and without effect irrespective of the margins of approval. This initiative is inconsistent with any other initiative on the same ballot that enacts any tax, that employs a method of computation, or that contains a rate not authorized by this measure, and any such other measure shall be null and void and without effect.

SECTION 12. Severability. If any provision of this Act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining sections shall not be affected, but shall remain in full force and effect, and to this end the provisions of this Act are severable.

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Sacramento, California

May 31, 1990

Honorable Lloyd G. Connelly
2176 State Capitol

Initiatives: Effect: Conflicts - #446

Dear Mr. Connelly:

You have asked what effect the Alcohol Tax Act of 1990 (hereafter "Alcohol Tax Act") and the Taxpayers Right to Vote Act of 1990 (hereafter "Taxpayers Act") would each have on the other should both initiatives qualify and be adopted by the voters at the November 6, 1990, general election.

The Alcohol Tax Act would impose a $0.05 surcharge on each unit, as defined, of alcoholic beverages, and would deposit moneys from that surcharge into an "Alcohol Surtax Fund," containing five separate accounts. Each account would be appropriated for specified purposes, including, among others, substance abuse prevention and treatment, law enforcement, shelter, and educational and recreational programs. In addition, the Alcohol Tax Act would add Section 7 to Article XIII A of the California Constitution to provide that the act shall not be subject to Section 3 of that article, which requires that any increase in state taxes for purposes of raising revenue be approved by a two-thirds vote of each house of the Legislature.

The Taxpayers Act would require that the imposition or increas of any tax by a statewide initiative or any local tax be subject to approval by either a simple or two-thirds majority of the voters. The act further provides that its requirements shall be effective on November 6, 1990, the date of the 1990 general election, and additionally provides, as specified, that its provisions shall prevail over or nullify any conflicting initiative adopted at the same election.

In particular, four provisions of the Taxpayers Act bear upon the act's effect, if adopted, on other concurrently adopted initiatives.

First, the Taxpayers Act would add a new Section 3 to Article XIII A of the California Constitution to require that general taxes adopted by initiative be adopted only by a majority of the voters, and that special taxes adopted by initiative be adopted only by two-thirds of the voters. Subdivision (e) of the new Section 3 would, for purposes of the Taxpayers Act, define a general tax as a tax to be "levied for the general fund to be utilized for general governmental purposes" and a special tax as a tax to be "levied for a specific purpose or purposes or deposited into a fund or funds other than the general fund."

Second, subdivision (d) of the new Section 3 to be added to Article XIII A of the California Constitution would require any special tax with respect to tangible personal property enacted on or after November 6, 1990, to be an ad valorem tax and comply with certain existing provisions of the California Constitution relative to taxation of personal property.

Third, Section 10 of the Taxpayers Act specifically provides that "this Act shall take effect on November 6, 1990," the day of the 1990 general election.

Fourth, Section 11 of the Taxpayers Act provides that, if the Taxpayers Act and another measure on the same ballot conflict and the Taxpayers Act receives the greater number of votes, the Taxpayers Act controls "in its entirety" and the "other measure shall be null and void and without effect." Moreover, if the constitutional amendments in the Taxpayers Act conflict with the statutory provisions of another measure on the same ballot, regardless of the vote, the Taxpayers Act again provides that it controls in its entirety, and the "other measure shall be null and void and without effect."

Section 11 of the Taxpayers Act is not a provision that would be added to the California Constitution, but is a "plus" section in the measure. As such, although the matter is far from clear, we think that the section would not be accorded constitutional dignity but would be given at most the effect of an uncodified statute and could perhaps merely be construed to be intent language. That is, this section would not prevail over conflicting constitutional provisions. In this connection, we point out that subdivision (b) of Section 10 of Article II provides that only the conflicting provisions of a measure, as opposed to the entire measure, receiving the highest number of votes prevails. Nevertheless, as discussed below, the characterization of Section 11 of the Taxpayers Act, as either a

constitutional provision or a statute, may have a significant effect upon the analysis of the combined effects of the two measures in question here and it is important that the uncertainty regarding this characterization be kept in mind.

In view of the foregoing, including the uncertainty as to whether Section 11 of the Taxpayers Act would be given the effect of a constitutional provision which is intended to supersede conflicting constitutional provisions, we shall discuss the combined effect of the Alcohol Tax Act and the Taxpayers Act, which in our view is dependent upon four major issues regarding the latter initiative. First, does the broad reach of the Taxpayers Act violate the single subject rule? Second, would the existing constitutional rules or the conflict provisions in Section 11 of the Taxpayers Act require the nullification of the Alcohol Tax Act? Third, would the Taxpayers Act be deemed a "revision" of the California Constitution? Fourth, would the Taxpayers Act, if adopted, be effective and operative from the beginning of the day of the general election, and thereby on its face nullify any concurrently adopted tax initiative not adopted pursuant to the act's specific vote requirements?

SINGLE SUBJECT RULE

In view of the possibility that the vote requirements of the Taxpayers Act, if effective from the beginning of Election Day, November 6, 1990, could retroactively and prospectively impact numerous and diverse measures (including the Alcohol Tax Act) and that other provisions of the Taxpayers Act could be construed to affect constitutional rules governing the resolution of substantive conflicts in one or more measures approved at the same election, we shall examine whether the Taxpayers Act is violative of the single subject rule.

Subdivision (d) of Section 8 of Article II of the California Constitution provides, as follows:

> "(d) An initiative measure embracing more than one subject may not be submitted to the electors or have any effect."

A similar rule applies to legislative enactments and requires that a statute embrace but one subject, which must be expressed in its title, and, if a statute embraces a subject not expressed in its title, only the part not expressed is void (Sec. 9, Art. IV, Cal. Const.). The same principles relating to the single subject rule apply to both initiatives and legislative enactments (Harbor v. Deukmejian, 43 Cal. 3d 1078, 1098, citing Perry v. Jordan, 34 Cal. 2d 87). There is, however, no requirement that the subject of the initiative measure be

expressed in the title, as prepared by the Attorney General (Harbor v. Deukmejian, supra, p. 1098; subd. (d), Sec. 10, Art. II, Cal. Const.; Secs. 3502 and 3503, Elec. C.).

As applied to initiative measures, the single subject rule has the dual purpose of avoiding logrolling and voter confusion (Harbor v. Deukmejian, supra, at p. 1098). "Logrolling" has been described as the practice of aggregating the votes of those who favor parts of the initiative measure into a majority for the whole, even though it is possible that some or all of its provisions are not supported by a majority of the voters (Brosnahan v. Brown, 32 Cal. 3d 236, 279, dissenting opinion of Bird, C.J.).

In summarizing the holdings of prior cases involving the single subject rule, the California Supreme Court in Harbor stated that a measure complies with the single subject rule if its provisions are either functionally related to one another or are reasonably germane to one another or the objects of the enactment (Harbor v. Deukmejian, supra, at p. 1100).

By way of background, in Evans v. Superior Court, 215 Cal. 58, the California Supreme Court held that a legislative act that adopted the entire Probate Code in one enactment with a title declaring that it was an "act to revise and consolidate the law relating to probate ... to repeal certain provisions of law therein revised and consolidated and therein specified; and to establish a Probate Code" did not violate the single subject rule as applied to legislative enactments (Sec. 9, Art. IV, Cal. Const.; Evans v. Superior Court, supra, at p. 63). The court determined that the subjects referred to in the classification of laws included in the code carried into the title of the act and were germane to, and had a necessary or a natural connection with, probate law and procedure (Evans v. Superior Court, supra, at p. 64).

Among the principles applied by the court in reaching its determination was one which states that provisions governing projects so related and interdependent as to constitute a single scheme may be properly included within a single act, and one which establishes that a provision which conduces to the act, or which is auxiliary to and promotive of its main purpose, or has a necessary and natural connection with such purpose is germane within the rule (Evans v. Superior Court, supra, at pp. 63 and 64).

In more recent cases, the rules laid down in Evans v. Superior Court, supra, have been relied upon to uphold initiative measures challenged on the ground that they embraced more than one subject. Thus, in determining the applicability of those

principles to the initiative measure identified as Proposition 13 on the ballot for the June 6, 1978, direct primary election, the California Supreme Court noted that, while the measure had several collateral effects, the several elements of the measure were reasonably germane to, and functionally related in furtherance of, a common underlying purpose, which, in that case, was real property tax relief, and therefore met both the rule of germaneness and the more restrictive test of functional relationship (see Amador Valley Joint Union High School District v. State Board of Equalization, 22 Cal. 3d 208, at p. 230).[1] However, in so holding, the Amador court did not address the question of whether the single subject rule as applied to an initiative requires that a measure meet both the "reasonably germane" and "functionally related" tests.

Subsequently, the court determined that an initiative measure which enacted the Political Reform Act of 1974 (Proposition 9, June 4, 1974, direct primary election), and which combined provisions regulating various aspects of elections to public office, ballot measure petitions and elections, public officials' conflicts of interest, and activities of lobbyists did not violate the single subject requirement of subdivision (d) of Section 8 of Article II of the California Constitution (Fair Political Practices Com. v. Superior Court, 25 Cal. 3d 33, 37-43). The court rejected the contention that a more restrictive test should be applied in determining compliance with the single subject requirement applicable to initiatives than to the same requirement applicable to legislation and adhered to the reasonably germane test for both initiatives and legislation, finding no reason to hold that the people's reserved power of legislation is more limited than that granted to the Legislature (Fair Political Practices Com. v. Superior Court, supra, at p. 42).

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[1] Shortly before Amador was decided, a single subject challenge was made to another initiative measure. In that case, the Attorney General refused to prepare a title and summary for a proposed initiative on the ground that it violated the single subject rule. The California Supreme Court held that his duty in this regard was ministerial, and that he was not authorized by the California Constitution to refuse preparation of the title and summary without prior judicial authorization (Schmitz v. Younger, 21 Cal. 3d 90. A dissenting opinion by Justice Manuel suggested that the single subject rule should be applied more strictly to initiative measures than to legislative bills, and that the "functionally related" test was the appropriate standard by which to measure compliance of initiatives with the rule (Schmitz v. Younger, supra, at pp. 98-100).

More recently, the court held that the constitutional and statutory provisions of the initiative measure known as the Victims' Bill of Rights (Proposition 8, June 8, 1982, direct primary election), which included regulations applicable to restitution, safe schools, truth-in-evidence, bail, use of prior convictions, diminished capacity and insanity, punishment of habitual criminals, victims' statements, plea bargaining, sentencing, and mentally disordered sex offenders, were reasonably germane to each other and thus satisfied the requirement that initiative measures embrace a single subject (Brosnahan v. Brown, supra, at p. 253).

The court stated that an initiative measure would not violate the single subject requirement if, despite its varied collateral effects, all of its parts are reasonably germane to each other and to the general purpose or object of the initiative (Brosnahan v. Brown, supra, at p. 245).

The several facets of Proposition 8 were deemed to bear a common concern, general object, or general subject promoting the rights of actual or potential crime victims (Brosnahan v. Brown, supra, at p. 247). The court described the initiative measure as a reform aimed at certain features of the criminal justice system to protect and enhance the rights of crime victims, and stated that this goal was the readily discernible common thread which united all of the initiative's provisions in advancing its common purpose (Brosnahan v. Brown, supra). In so doing, the court rejected a contention that the provisions of an initiative measure must be interdependent or interlocking to meet the single subject test (Brosnahan v. Brown, supra, at p. 249). Thus, in summarizing its prior holdings, the Harbor court stated that "this court [in Brosnahan] rejected the claim that the single subject rule requires that a measure meet both the 'reasonably germane' and 'functionally related' tests, and held that either standard would satisfy the constitutional requirement" (Harbor v. Deukmejian, supra, at p. 1099).

Hence, an initiative measure complies with the single subject rule of subdivision (d) of Section 8 of Article II of the California Constitution if its provisions are either functionally related to one another or are reasonably germane to one another or the objects of the enactment (Harbor v. Deukmejian, supra, at p. 1100).

More recently, a court of appeal declared one initiative proposed for the November 8, 1988, general election ballot to be invalid in its entirety as violative of the single subject rule, but, against similar contentions, upheld the validity of a separate initiative measure proposed for the same ballot.

In California Trial Lawyers Assn. v. Eu, 200 Cal. App. 3d 351, the court issued a peremptory writ of mandate directing the Secretary of State and the registrar of voters to refrain from verifying signatures on qualifying petitions, certifying the initiative measure, or placing it on the ballot. The initiative, which would have established a system of no fault insurance for automobile accident injuries and set limits on attorney contingency fees, among other matters, contained a provision at pages 52 and 53 of a 120-page draft that would have protected from future restriction political contributions by insurance industry members, among others, and could have exempted contribution recipients from local conflict-of-interest rules (see California Trial Lawyers Assn. v. Eu, supra, at p. 356 and note 3 at p. 359).

The court held that this provision was neither functionally related to other provisions of the measure nor reasonably germane to the objects of the initiative, which was to "... rein in the constantly increasing premiums charged to California purchasers of liability insurance ..." (Id., at pp. 358 to 361, incl.). Moreover, the court held that subdivision (d) of Section 8 of Article II of the California Constitution precludes the submission to the voters of an initiative measure that violates its single subject limitation (Id., at p. 362). The court therefore issued the peremptory writ prohibiting the placement of the initiative measure on the statewide ballot.[2]

Subsequently, in Insurance Industry Initiative Campaign Committee v. Eu, 203 Cal. App. 3d 961, the same court of appeal denied a petition for a writ of mandate directing the Secretary of State to refrain from placing on the November 8, 1988, general election ballot a competing initiative measure that, among other things, would require a minimum specified percentage reduction in certain rates for good drivers from January 1, 1988, levels, would create the Office of Insurance Consumer Advocate, and would make applicable to insurance companies state statutes prohibiting discrimination, price fixing, and unfair practices.[3]

The court found no transgression of the single subject rule by two separate provisions, one of which removed statutory

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[2] The offending provision was deleted from the initiative, the petitions were recirculated, and the measure qualified, as amended, for the November 8, 1988, general election ballot (see Proposition 104).

[3] This initiative measure qualified for, and appeared on, the November 1988, general election ballot as Proposition 100.

limitations on banking institutions and authorized them to compete in the insurance industry and the other which restricted the regulation of attorneys' fees in insurance-related cases, among others (see Insurance Industry Initiative Campaign Committee v. Eu, supra, at pp. 965-966). The removal of restrictions on banks to sell insurance products was related to the general purpose of the initiative of moderating the cost of insurance to the consumer through increased competition, and the attorneys' fees provision was substantially related to the object of enhancing the access of consumers to competent legal counsel to pursue legitimate insurance claims against insurers who engage in unfair practices, as set forth in an express statement of purpose (Id., at pp. 965 and 967). Since both provisions satisfied the "reasonably germane" portion of the single subject rule, the court denied the petition for the writ.[4]

As previously discussed above, the Taxpayers Act purports to apply, on election day itself and in omnibus fashion, vote requirements to nullify any taxation initiative adopted concurrently but not in conformity with those vote requirements. Thus in the context of the single subject rule, the first problem raised by the Taxpayers Act is whether the act, in providing for the nullification of any initiative imposing a tax and not meeting the act's vote requirements, extends its reach to more than one subject.

Fundamentally, there is no precise method of determining what types of provisions in what initiatives would be voided by way of the Taxpayers Act's vote requirements. In particular, while affected initiatives may impose a tax, those initiatives may also deal with substantive matters apart from taxation. With regard to the Alcohol Tax Act, the act arguably deals with both the imposition of surcharges on alcoholic beverages, and with the establishment of new programs to address the many and costly effects on society of alcohol consumption.

Viewed most favorably for the proponents of the Taxpayers Act, it may be argued that the act's goal is to ensure that taxes, whether statewide or local, are adopted in accordance with what the voters deem to be a proper requisite vote of either the Legislature or the electorate and that the consequences of its language are germane to that goal. In this connection, it could

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[4] The court also stated that, because the initiative process had advanced to a point where preelection review was inappropriate, it would be well within its discretion to deny the petition for the writ on this ground alone, even though it considered the merits of the petition (see Insurance Industry Initiative Campaign Committee v. Eu, supra, note 2 at p. 964)

be argued that the express provisions of the Taxpayers Act are explicitly focused upon the procedural requirements for the adoption of new taxes or increases in existing taxes, and do not directly impinge upon other subjects.

That argument, however, ignores the attempted effect of Section 11 of the Taxpayers Act, which is to make measures on the November ballot that impose new taxes or increase existing taxes and do not meet the vote requirements of the Taxpayers Act void in their entirety, rather than voiding just those provisions that actually imposed taxes or increased existing taxes. In other words, the effect of Section 11 is potentially much broader than just the limited subject of the procedures for increasing taxes.

Thus, while the Taxpayers Act may be analogized to Proposition 13, and, hence, within the single subject rule, as discussed in Amador, supra, in reality, the Taxpayers Act is much broader in scope. In fact, the Taxpayers Act has an almost unlimited reach in that the disparity between the programmatic portions of measures that may be approved by the voters and made void in their entirety covers the entire expanse of human imagination. Viewed in a slightly different fashion, the effect of the Taxpayers Act is the same as a measure that contained a repeal of every measure on the ballot that contained a tax increase not approved by the requisite vote.

Moreover, the Taxpayers Act raises another problem of perhaps even greater significance in the context of the single subject rule. If Section 11 of the Taxpayers Act is given constitutional stature, in addition to dealing with the procedural requirements for the adoption of new taxes or increases in existing taxes, the Taxpayers Act (as discussed in more detail below under "Conflicts") would also affect the general constitutional rule in subdivision (b) of Section 10 of Article II of the California Constitution for determining how to resolve conflicts in different measures adopted at the same election. That change, we think, is totally unrelated to the subject of procedural requirements for the adoption of taxes.

That is, in the context of a measure that deals with the broad subject of procedural requirements for the adoption of taxes, we think any provision therein that proposes to modify the provisions of the California Constitution for resolving conflicts among different measures considered at the same election would be violative of the single subject rule. In that connection, we also think any such provision would necessarily have to be adopted in a separate measure which takes effect prior to the adoption of any measure intended to be affected thereby.

Accordingly, we think that a court would conclude that a measure that attempts to deal with all of the matters discussed above has no central unifying purpose, causes substantial voter confusion, and, therefore, violates the single subject rule. In that event, since the California Constitution provides that an initiative measure embracing more than one subject may not have any effect (subd. (d), Sec. 8, Art. II, Cal. Const.), the entire measure would not have any force or effect, and would not be valid.

CONFLICTS

Notwithstanding the conclusion reached above that the Taxpayers Act violates the single subject rule, since a court may determine otherwise, or in the alternative, since a court may decide to sever the offending provision (which is something no California court has ever done), we shall proceed to analyze the effect of each initiative should both be adopted.

At this point, it is necessary to determine whether the Alcohol Tax Act would impose, under the provisions of the Taxpayers Act, either a general or special tax. As revenues from the surcharge imposed by the Alcohol Tax Act would be placed in particular accounts in a special fund, to be expended for specified, limited purposes, we think the Alcohol Tax Act would, under the provisions of the Taxpayers Act, impose a special tax requiring a two-thirds vote for adoption. We will assume for purposes of analyzing the combined effect of the two initiatives should they both be adopted, that the Alcohol Tax Act would be adopted by only a simple majority of the voters, short of the two-thirds majority required by the Taxpayers Act.

The California Constitution provides in two separate articles that if the provisions of two or more measures approved at the same election conflict, those of the measure receiving the highest affirmative vote shall prevail (subd. (b), Sec. 10, Art. II; Sec. 4, Art. XVIII, Cal. Const.). The first reference to the resolution of this potential conflict is made in the context of the initiative and referendum process and the second reference is made in the context of proposed constitutional amendments and constitutional revisions.

The rule providing for the measure receiving the highest affirmative vote to prevail in the event of a conflict, was first added to Section 1 of Article IV of the California Constitution in 1911, at the time that the right to the initiative and referendum was first created in the California Constitution (see former Sec. 1, Art. IV, Cal. Const.). This language remained in Section 1 of Article IV until the November 8, 1966, general election. At that election, this conflict rule was incorporated

into new subdivision (b) of Section 24 of Article IV of the California Constitution. The language change made by the addition of subdivision (b) was classified by the California Constitution Revision Commission as containing only modest changes in phraseology and no change in meaning (Proposed Revision of the California Constitution, February 1966, California Constitution Revision Commission, p. 47). A subsequent amendment and renumbering of subdivision (b) of Section 24 of Article IV, resulted in the language of that former subdivision being set forth in identical text in current subdivision (b) of Section 10 of Article II (June 8, 1976, direct primary election). Thus, there has been no attempt to change the meaning of the language in issue since its original introduction into the California Constitution in 1911.

As to the conflict language contained in Section 4 of Article XVIII, that language was added to that article apparently to clarify that the conflict rule applies to amendments proposed by the Legislature (General Election Ballot Pamphlet, November 3, 1970, p. 27; see also Transcripts of June 4, 1964, meeting of the California Constitution Revision Commission, at pp. 57-66).

The courts have held that the rule set out in subdivision (b) of Section 10 of Article II of the California Constitution should only be invoked if initiative provisions cannot be harmonized, and the courts are required to try to give statutes adopted by the voters "concurrent operation and effect" (Estate of Gibson, 139 Cal. App. 3d 733, 736). Once an irreconcilable conflict has been established, a determination must be made as to whether those provisions to be voided are severable from the remaining portions of the affected initiative (Santa Barbara Sch. Dist. v. Superior Court, 13 Cal. 3d 315, 330).

Apart from the foregoing authority, Section 11 of the Taxpayers Act proposes to resolve any conflicts with other initiatives as follows:

> "SECTION 11. Conflicting Law. Pursuant to Article II, Sec. 10(b) of the California Constitution, if this measure and another measure appear on the same ballot and conflict, and this measure receives more affirmative votes than such other measure, this measure shall become effective and control in its entirety and said other measure shall be null and void and without effect. If the constitutional amendments contained in this measure conflict with the statutory provisions of another measure on this ballot, the constitutional provisions of this measure shall become effective

> and control in their entirety and said other measure shall be null and void irrespective of the margins of approval. This initiative is inconsistent with any other initiative on the same ballot that enacts any tax, that employs a method of computation, or that contains a rate not authorized by this measure, and any such other measure shall be null and void and without effect."

As previously discussed above, Section 11 of the Taxpayers Act is not a provision that would be added to the California Constitution, but is a "plus" section in the measure. As such, while the matter is far from being clear, we do not think it is a constitutional provision that is controlling over conflicting constitutional provisions, such as subdivision (b) of Section 10 of Article II, which provides that the conflicting provisions of the measure, as opposed to the entire measure, receiving the highest number of votes prevails. Thus, in this case, if the Alcohol Tax Act is approved by the voters with fewer votes than the Taxpayers Act, the provisions of the Alcohol Tax Act, if any, not in conflict with the Taxpayers Act, and severable from the other portions of the measure, would still be given effect (see Santa Barbara Sch. Dist. v. Superior Court, supra, pp. 330-332; see also Taxpayers to Limit Campaign Spending v. Fair Pol. Practices Com., 212 Cal. 3d 991, 1011-1012, respondent's petition for review granted by California Supreme Court, 12/7/89).

As to the severability of remaining sections of the Alcohol Tax Act, the California Supreme Court has established a three-step test applicable to both initiative measures and legislative enactments as follows: First, is the language of the statute mechanically severable? Second, can the severed sections be applied independently? Third, would the severed portions have been adopted by the voters if they had known in advance that portions of the initiative would be nullified (Santa Barbara Sch. Dist. v. Superior Court, supra, 330-332)?

In that regard, we think there is nothing in the Alcohol Tax Act that is severable from the tax provisions. Generally, the Alcohol Tax Act does two things: it provides for the imposition of taxes and the manner in which the revenues from those taxes are to be spent. Using the tests of severability established by the courts, we think that the severing of the portion of the Alcohol Tax Act providing for the expenditure of funds does not make any sense if there are no funds to expend.

With regard to the two initiatives in question, a conflict arguably exists between provisions of the Taxpayers Act adding a new Section 3 to Article XIII A of the California

Constitution, and provisions of the Alcohol Tax Act adding a new Section 7 to Article XIII A. While the new Section 3 of Article XIII A proposed by the Taxpayers Act would impose the majority and two-thirds vote requirements for the adoption by initiative of statewide general and special taxes, respectively, and would prohibit the enactment of special taxes on or after November 6, 1990, with respect to tangible personal property other than ad valorem property taxes, the new Section 7 of Article XIII, as proposed by the Alcohol Tax Act, would provide, without disclaiming the effect of any contrary provisions, that the act shall not be subject to Section 3 of that article. Consequently, read together, the two sections arguably are in conflict.

Upon a determination that the two measures are substantively in conflict, the question of which section would prevail in the case of concurrent adoption would depend upon which initiative received a greater number of votes (subd. (b), Sec. 10, Art. II, Cal. Const.). Thus, should the Taxpayers Act receive a greater number of votes, the exemption provided by Section 7 of the Alcohol Tax Act would be nullified, and the adoption of at least the tax portions of the Alcohol Tax Act would be subject to the two-thirds vote requirement of the Taxpayers Act if the requirements of the Taxpayers Act are given effect as of November 6, 1990 (see discussion of Retroactivity below), and would thereby be void if the requisite number of votes is not achieved.

In addition to the conflict in the two measures with respect to the vote requirement discussed above, the two measures may be in conflict with respect to other provisions. Section 7 of Article XIII A of the California Constitution, as proposed to be added by the Alcohol Tax Act, would provide that the Alcohol Tax Act would not be subject to Section 3 of that article. Subdivision (d) of Section 3 of that article, proposed by the Taxpayers Act, would prohibit the enactment of special taxes on or after November 6, 1990, with respect to tangible personal property other than ad valorem property taxes. While the meaning of the latter provision is somewhat unclear, these two provisions may be in conflict if a court determines that a tax "with respect to tangible personal property" includes an excise tax on the sale of alcoholic beverages as is the surcharge proposed by the Alcohol Tax Act.

Thus, even in the event that the Alcohol Tax Act secures the requisite two-thirds vote, but that vote is less than the votes secured for the Taxpayers Act, a conflict may exist, depending on the construction of the language in the Taxpayers Act as to the type of tax it prohibits, that would cause the tax portions of the Alcohol Tax Act to be held to be void and prohibited by new subdivision (d) of Section 3 of Article XIII A

if the requirements of the Taxpayers Act are given effect as of November 6, 1990 (see discussion of Retroactivity below). On the other hand, if the Alcohol Tax Act receives the requisite two-thirds vote and secures more votes than the Taxpayers Act, then we think Section 7 of Article XIII A of the California Constitution, proposed to be added by the Alcohol Tax Act, would prevail over the new provisions of subdivision (d) of Section 3 of that article, proposed by the Taxpayers Act, and thus the provisions imposing a surcharge on alcoholic beverages proposed by the Alcohol Tax Act would take effect.

Alternatively, the courts may attempt to harmonize the sections by construing the Alcohol Tax Act's exemption from Section 3 of Article XIII A as a specific exception, however inartful, to the Taxpayers Act's voting requirements for the adoption of statewide taxes. Fundamentally, the various provisions of the California Constitution are to be harmonized with each other rather than be construed to conflict (Board of Supervisors of San Diego Co. v. Lonergan, 27 Cal. 3d 855, 866; Penziner v. West American Finance Co., 10 Cal. 2d 160).

Moreover, principles of statutory construction, generally applicable to constitutions (Hyatt v. Allen, 54 Cal. 353, 356; Hammond v. McDonald, 49 Cal. App. 2d 671, 681), also indicate that the exemption provided by the Alcohol Tax Act may be construed as a specific exemption, rather than a conflicting rival provision. In particular, it is an axiom of statutory construction that a particular or specific provision will take precedence over a conflicting general provision (Sec. 1859, C.C.P.; Agricultural Labor Relations Bd. v. Superior Court, 16 Cal. 3d 392, 420; Fleming v. Kent, 129 Cal. App. 3d 887, 891). Therefore, as in the case of two apparently conflicting statutory provisions, one specific and one general, the two proposed constitutional provisions in question could be respectively interpreted as a specific exception and a general rule. That interpretation may be further supported by virtue of the fact that the Taxpayers Act is intended to operate retroactively as of the day of the election, November 6, 1990, while the Alcohol Tax Act would commence to operate as of the day after the election, November 7, 1990. Thus, on November 6, 1990, the new Section 3 of Article XIII A proposed by the Taxpayers Act would commence to operate, and the next day, new Section 7 of Article XIII A proposed by the Alcohol Tax Act, would make the new Section 3 inapplicable only with respect to the provisions of the Alcohol Tax Act.

As discussed earlier, the courts will endeavor to harmonize and give effect to both measures (Taxpayers to Limit Campaign Spending v. Fair Pol. Practices Com., supra). Thus, if both measures are approved by the voters and the Alcohol Tax Act

receives more votes, or, in the alternative, if both measures are approved by the voters and the Taxpayers Act receives more votes, but the court determines that the two measures are not substantively in conflict, because the measures may be harmonized by treating the addition of Section 7 to Article XIII A as an exception to Section 3 of Article XIII A, as added by the Taxpayers Act, then in either event, the Alcohol Tax Act would be given effect. In that case, the Taxpayers Act generally would be effective as to any other measure that did not receive more votes and measures proposed in the future.

AMENDMENT vs. REVISION

In addition to the policy reasons mentioned by the courts to support withholding an initiative measure from the ballot that violates the single subject rule (see, Brosnahan v. Eu, 31 Cal. 3d 1, 6-8, concurring and dissenting opinion of Mosk, J.), there also exists the additional consideration of the constitutional limitation on the power of the electors to work a revision of the California Constitution by initiative. That is, the California Constitution permits the initiative power to be exercised only for the purpose of amending the Constitution (Sec. 3, Art. XVIII, Cal. Const.). A proposed initiative measure which, because of the impact of its provisions, works a revision of the Constitution, is subject to being withheld from the ballot by court order (see McFadden v. Jordan, 32 Cal. 2d 330).

Section 1 of Article XVIII of the California Constitution permits the Legislature, by rollcall vote entered in the journal, two-thirds of the membership in each house concurring, to propose an amendment or revision of the Constitution. In contrast, Section 3 of Article XVIII of the California Constitution omits the term "revision" and provides that electors may only "amend" the Constitution by initiative.

The definitions of "amendment" and "revision," as used in Article XVIII of the California Constitution, are set forth in the analysis of Proposition 7 on the November 6, 1962, general election ballot. According to that analysis, "amendments" are specific and limited changes in the Constitution, while "revisions" are broad changes in all or a substantial part thereof (Prop. 7 on the November 6, 1962, ballot). Not only are these two words distinct by definition, but the distinction has become a matter of practical importance; because, historically, the Constitution has prescribed a different procedure for the implementation of each.

The Constitution is an instrument of a "permanent and abiding nature" (McFadden v. Jordan, supra, at p. 333), and the provisions for its "revision" have always reflected the will of

the people in maintaining the underlying principles and permanent nature of the document. Prior to 1962, proposals for constitutional "revisions" could only be presented to the voters by a constitutional convention convened by the Legislature for that purpose (see Sec. 2, Art. XVIII, Cal. Const.). In contrast, "amendments" could be effected by an initiative from the people or a proposal by the Legislature.

At the November 6, 1962, general election, Section 1 of Article XVIII was amended to authorize the Legislature to propose and submit to the people a "revision" of all or part of the California Constitution in the same manner as "amendments" to the Constitution. However, the initiative power of the people was not expanded when the Legislature's power to propose changes in the Constitution was increased in 1962.

At the 1970 general election, when Section 3 of Article XVIII of the California Constitution was added, reference to "amending" the Constitution by initiative was included "to assure the Article mentions all methods for changing the Constitution" (Proposed Revision of the California Constitution, California Constitution Revision Commission 1966-1971, Comment, 110). Again, the initiative power was not expanded to include "revisions," but remains in principle as it did when first added to the Constitution in 1911.

As previously discussed above, the stature of Section 11 of the Taxpayers Act, as a constitutional or statutory provision, is far from being clear. While we think Section 11 of the Taxpayers Act would be viewed as something akin to a statute, Section 11 of the Taxpayers Act nevertheless would propose to resolve any conflicts with other initiatives and legislatively proposed constitutional amendments in such a way as to, in effect, exempt, in part, the Taxpayers Act from the constitutional rule providing for the measure receiving the highest affirmative vote to prevail only with respect to the substantive conflicting provisions of the measure (subd. (b), Sec. 10, Art. II; Sec. 4, Art. XVIII, Cal. Const.).

In view of the possibility that Section 11 of the Taxpayers Act may be characterized as a constitutional provision and in view of the potential impact those provisions may have on various parts of the California Constitution, we think the courts may view Section 11 of the Taxpayers Act, together with the other provisions of the Taxpayers Act relating to procedural requirements and limitations for the imposition of taxes, as constituting a significant qualitative revision of the California Constitution, and not merely an amendment.

RETROACTIVITY

With regard to the effective date of the Taxpayers Act, subdivision (a) of Section 10 of Article II of the California Constitution provides that an initiative approved by the voters "takes effect the day after the election unless the measure provides otherwise." While invariably the date provided otherwise is later, we see no constitutional prohibition to the general proposition that initiatives may be made retroactive in the sense of operating on facts that occur before the date of adoption, so long as vested rights are not impaired (see Hopkins v. Anderson, 218 Cal. 62, 67; Kenney v. Wolff, 102 Cal. App. 2d 132).

The initiative is the power of the electors to propose statutes and amendments to the California Constitution and to adopt or reject them (subd. (a), Sec. 8, Art. II; Sec. 3, Art. XVIII, Cal. Const.). This power is the exercise by the people of a power reserved to them and is not the exercise of a power granted to them (Blotter v. Farrell, 42 Cal. 2d 804, 809). As discussed above, if an initiative measure is approved by a majority of votes thereon, it takes effect the day after the election unless the measure provides otherwise (subd. (c), Sec. 8, and subd. (a), Sec. 10, Art. II, Cal. Const.; Sec. 4, Art. XVIII, Cal. Const.).

Thus, on November 6, 1990, the voters would have the constitutional power to approve by a majority of votes thereon a statutory initiative to impose taxes as proposed by the Alcohol Tax Act. However, the Taxpayer Act would require that the imposition of any special tax by a statewide initiative be subject to approval by a two-thirds majority of the voters. By having the Taxpayers Act be operative as to the validity of measures to be considered by the voters on November 6, 1990, we think the Taxpayers Act may operate to impair the right of the voters on November 6, 1990, to propose statutes by initiative and to approve them by a majority vote.

SUMMARY

We are of the opinion that the Taxpayers Act is constitutionally invalid because it violates the single subject rule and also may constitute a revision, and not amendment, of the California Constitution.

Moreover, we think that giving effect to the proposed effective date of the Taxpayers Act, November 6, 1990, the day of the 1990 general election, may operate to impair the right of the voters on that day to propose statutes by initiative and to approve them by a majority vote.

If, however, the Taxpayers Act is determined to be valid, at least in part, and is made retroactive to apply to measures adopted at the November 6, 1990, election and, both the Taxpayers Act and the Alcohol Tax Act are approved by the voters, and the Alcohol Tax Act receives more votes than the Taxpayers Act, we think the Alcohol Tax Act would prevail. Finally, if the Taxpayers Act receives more votes than the Alcohol Tax Act, we think there is a basis for a court to find that the two measures are not substantively in conflict and that the Taxpayers Act does not apply to the Alcohol Tax Act.

Very truly yours,

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